

Annex 1: Submission Summary from the Aotearoa New Zealand's Sexual Orientation, Gender Identity and Intersex (SOGII) UPR Coalition 2013

This submission is from community groups representing intersex people and people of diverse sexual orientations and gender identities. Annexes include a glossary of terms.

Statistics, Data and Analysis:

Issue: The collection of population-based data through the NZ Census or the NZ Health Survey does not include self-identified sex, sexual orientation or gender identity data. It is crucial that this data is collected to identify and address significant health disparities for our communities. For example, previous research surveys showed same-sex and both-sex attracted youth face significantly higher mental and physical health risks.

Recommendation: require Statistics New Zealand and government agencies, in consultation with our communities, to collect consistent data on outcomes for sex, gender and sexually diverse people, including in the next census and NZ Health Survey.

Legal Recognition of Relationships and of Gender Identity

Issue: The Marriage (Definition of Marriage) Amendment Act 2013 improved legal recognition of partner relationships for sexual minorities. Intersex and trans people continue to face significant barriers to obtaining consistent official documentation that reflects their gender identity. Amendments to birth certificates of trans people require a Family Court process and evidence of medical gender reassignment treatment.

Recommendations: a) ensure trans and intersex people are not required to undertake medical procedures, some of which involve sterilisation, in order to gain recognition before the law. b) enable sex details on official documentation to be recorded as male, female or indeterminate / intersex based on self-identification.

Right to Human and Personal Security

Issue: New Zealand lacks hate crime legislation. SOGII people and other minorities are more at risk of being attacked based on hostility against our communities. The Sentencing Act 2002 enables a court to consider if a crime was motivated by a victim's sexual orientation or gender identity, but there are no procedures to ensure judges receive relevant information for sentencing, nor is use of Sentencing Act provisions monitored.

Recommendations: explore options for NZ Police and our communities to work together to a) increase reporting of offences based on hostility against someone's sexual orientation, sex or gender identity and to b) improve the effectiveness of the current Sentencing Act provisions and identify whether further legislative or policy provisions are needed.

Right to security and right to education

Issue: Bullying and violence are significant problems for young people in NZ schools, particularly. There are voluntary anti-bullying campaigns in schools but these lack adequate government support to ensure the human rights of students who are sex, gender or sexually diverse are respected.

Recommendation: support and fund school-based initiatives that promote inclusive school communities and address bullying and marginalisation of SOGII students

Rights to security and health – Trans Prisoners

Issue: There is no data on the number of trans prisoners. The Human Rights Commission, Ombudsman's Office and lawyers have raised concerns about trans prisoners' right to health (including access to hormone treatment) and the safety of trans women in male prisons.

Recommendation: review the Department of Corrections' policy for transgender prisoners to ensure transgender and transsexual prisoners' safety and dignity and their access to appropriate health and rehabilitation services within prison.

SOGII Health

Issue: People of diverse sexual orientations and gender identities face greater barriers to effective mental health services in New Zealand, due to exclusion, stigma, and ignorance. Physical health services usually operate separate male and female services, which do not adequately meet the needs of trans and intersex people. There continue to be major gaps in the availability, accessibility, acceptability and quality of medical services required by trans people seeking to transition.

Recommendations: a) develop practice standards and require health providers to demonstrate steps taken to improve access to, and the standard of, health services' delivery for our communities and b) undertake research into the health and well-being need of those groups within SOGII communities who face significant health disparities (particularly Māori, and Pacific people, and disabled and older people)

Education

Issue: Sexuality education is taught as an optional part of the Health curriculum in New Zealand schools. The Education Review Office found gaps in meeting the needs of students of diverse sexes, genders and sexualities. Appropriate sexuality education is critical to reduce discrimination, stigma, marginalisation and the associated negative educational, health and well-being outcomes for these students.

Recommendation: improve and extend the delivery of high quality, comprehensive sexuality education which encompasses sex, gender and sexuality diversity, including in government-funded partnership and charter schools

Right to health and freedom from torture - Intersex human rights issues

Issue: NZ infants born with an intersex condition are still operated on to make their bodies more typically 'male' or 'female'. Genital-normalising treatment, including surgery poses severe risks for sexual and reproductive health, is not always consistent with the person's gender identity, and is often performed without consent.

Recommendations: a) statutorily prohibit surgical procedures, aimed solely at correcting genital ambiguity, on children who are not competent to consent for themselves and b) facilitate dialogue between intersex people, relevant government agencies and health professionals in order to best inform policy and medical practice regarding intersex conditions and c) provide funding to enable optional reversal or alteration of previous surgical gender assignment procedures because of an intersex condition.

Right to health - Trans and Gender Diverse Health Rights and Depathologisation

Issue: Usually a trans person must be "diagnosed" with a clinical disorder called 'Gender Dysphoria' or 'Gender Identity Disorder' to access healthcare or medical support to transition, and then pay for the diagnosis themselves. A diagnosis that defines gender diversity itself as a

medical problem is at odds with current international guidelines and practice and has negative impacts on trans and gender diverse people's health and wellbeing.

Recommendations: that the government a) requires District Health Boards to ensure trans people's access to gender reassignment services available in NZ and b) provides sufficient funding to enable timely access to gender reassignment surgeries not provided through the NZ public health system and c) ensures medical professionals are trained in using an informed consent approach with trans people instead of one that pathologises gender diversity.

Right to work - Employment Discrimination

Issue: SOGII workers, especially trans workers, face higher levels of employment discrimination. Stronger legal provisions are needed to protect their rights to decent work and freedom from discrimination.

Recommendations: a) explicitly include gender identity as a ground of unlawful discrimination in the Human Rights Act 1993 and b) repeal amendments to the Employment Relations Act in 2010 which removed the right to personal grievance procedures within the first 90 days of employment

Annex 2: Full list of Recommendations:

We recommend that the New Zealand Government be directed to:

Statistics

- a) *require Statistics New Zealand to collect data on the self-identities of sex, gender and sexually diverse people, in consultation with those communities and the Human Rights Commission, including in the next census, NZ Health Survey and other key surveys*
- b) *ensure this information is used to inform state responses including, but not restricted to, diversity training for professionals in the education, health and justice sectors and the development and funding of resources and services for our communities*
- c) *standardise these categories for collection of information by government agencies (including public hospitals and schools) about the experiences of sex, gender and sexually diverse people*
- d) *prioritise improving data collection about sex, gender and sexually diverse people's use of health services and their health outcomes*

Legal Recognition

- e) *remove any requirement to undergo or intend to undergo medical or surgical procedures, including those that may result in sterilisation, as a prerequisite for changing sex details on a birth certificate or other official document*
- f) *enable adults with intersex conditions and trans and other gender diverse adults to change the sex details on any official documentation to male, female or indeterminate based solely on the individual's self-identification, without any requirement for medical treatment and without the need to resort to a court process*
- g) *enable children and young people under the age of 18 who have intersex conditions or who are trans or gender diverse to access this same procedure, with only the additional requirement that they have the support of their legal guardian / parent, taking into account the evolving capacities and best interests of the child*
- h) *review the Adoption Act 1955 with the aim of reflecting the legitimate diversity of New Zealand family and parenting arrangements*

Security

- i) *explore options for Police and our communities to work together on practical solutions that will*
 - *increase reporting of offences committed partly or wholly because of hostility against based on someone's sexual orientation, sex or gender identity*
 - *improve the effectiveness of the current Sentencing Act provisions and identify whether further legislative or policy provisions are needed to protect sexuality, sex and gender diverse people's right to safety*
- j) *support and fund school-based initiatives that promote inclusive school communities and address bullying and marginalisation of SOGII students*
- k) *update the Department of Correction's Transgender Prisoner policy to reflect international best practice about placement, care and management of trans prisoners to ensure their right to safety, and access to health services and rehabilitation on an equal basis as others*

SOGII Health and Education

- l) develop practice standards to improve access to, and the standard of, health services delivery for our communities*
- m) require health providers to demonstrate steps taken to build health care professionals' responsiveness to the health needs of our communities*
- n) undertake research into the health and well-being need of those groups within SOGII communities who face significant health disparities (particularly Māori and Pacific people) or have additional health needs (including disabled and older people)*
- o) improve and extend the delivery of high quality, comprehensive sexuality education which encompasses sex, gender and sexuality diversity and moves beyond inaccurate binaries to all young people in schools, including partnership and charter schools*

Intersex Health Rights

- p) statutorily prohibit surgical procedures, aimed solely at correcting genital ambiguity, on children who are not competent to consent for themselves*
- q) facilitate dialogue between intersex people, relevant government agencies, District Health Boards and medical practitioners in order to best inform policy and medical practice regarding intersex conditions*
- r) require compulsory training in relevant undergraduate and postgraduate courses on appropriate medical responses to intersex conditions*
- s) provide funding to enable optional reversal or alteration of previous surgical gender assignment procedures because of an intersex condition*
- t) require longer retention of medical records belonging to those who have undergone gender assignment procedures because of an intersex condition*
- u) officially recognise and apologise for the detrimental effects of previous medical policy and practice in the treatment of intersex conditions*

Trans and Gender Diverse Health Rights

- v) require District Health Boards to ensure trans people's access to gender reassignment services available in NZ*
- w) provide sufficient funding to enable timely access to gender reassignment surgeries not provided through the NZ public health system*
- x) support the development of training and resources on an informed consent model of healthcare for trans people*
- y) guarantee access to health services for trans people without the requirement to have a mental health diagnosis (such as gender identity dysphoria or gender identity disorder)*
- z) support and facilitate the provision of training and resources for health professionals about gender diversity, and provide information and resources for communities and individuals about accessing healthcare as a gender diverse person*
- aa) request and support an update of the good practice guidelines "Gender Reassignment Health Services for Trans People Within New Zealand"¹ in consultation with trans people, to reflect an informed consent model that focuses on access, safety, wellbeing, respect and diversity*

Employment Discrimination

- bb) repeal amendments to the Employment Relations Act in 2010 which removed the right to personal grievance procedures within the first 90 days of employment*

cc) amend the Human Rights Act to state explicitly that gender identity is a prohibited ground of discrimination

ⁱ Counties Manukau District Health Board. (2011) *Gender Reassignment Health Services for Trans People within New Zealand*. Wellington: Ministry of Health. Accessible online at: <http://www.health.govt.nz/publication/gender-reassignment-health-services-trans-people-within-new-zealand>