

30 September 2010

Consultation on human rights in relation to sexual orientation and gender identity

Thank you for the opportunity to make submissions on the chapter relating to sexual orientation and gender identity.

The recommendations in this chapter state that priority areas where more work is needed include:

- amending the Human Rights Act to explicitly state that discrimination on the grounds of gender identity is prohibited under the Act as being discrimination on the ground of sex;
- amending the physical conformity threshold in section 28 of the Births Deaths Marriages and Relationships Registration Act 1995;
- sharing best practice so the rights of trans-students to education is fully protected;
- building on the Counties Manakau District Health Board project to develop standards of care and treatment pathways for trans people wishing to physically transition.

My response

I commend the efforts to enable trans people to participate in matters that affect them, using the human rights framework as leverage for change.

Medical records

I note the chapter states that trans people have limited access to their medical records. Rule 6 of the Health Information Privacy Code provides that where a health agency holds information in a way that it can be readily retrieved, the individual concerned is entitled to obtain from the agency confirmation of whether or not the agency holds their health information and have access to the information. Although Part 4 of the Privacy Act sets out a list of reasons for refusal of information, I would expect that, in most cases, the individual would be able to obtain this information, particularly once they are over the age of 16. Any concerns about this issue should be directed to the Privacy Commissioner.

Medical procedures

The chapter raises the issue of medical procedures performed on children and young people with intersex conditions. In the case of children under the age of 16, the relevant provision is section 36(3) of the Care of Children Act 2004, which provides that consent to medical treatment may be given by a guardian of the child. Right 6 of the Code of Health and Disability Services Consumers' Rights (the Code) requires that every consumer is given an explanation of the options available, including an assessment of the risks, side effects, benefits and costs of each option. Accordingly, I consider it is important that parents and competent young people are made aware of the differing views about this issue before making a decision.

National Best Practice

With regard to health needs, the lack of national guidance based on best practice means there is a lack of information for practitioners and consumers about the options available, the recommended practices and who is providing services. Trans people should provide key consumer input into best practice development.

There is a need for a national network of knowledgeable health practitioners willing to share their skills and mentor other practitioners. As this is a specialist area, consumers and providers require the details of these practitioners.