

19 December 2006

Rosslyn Noonan
Chief Commissioner
Human Rights Commission
45 Queen Street
AUCKLAND

Dear Ms Noonan

Inquiry into discrimination experienced by transgender people

Thank you for the opportunity to make submissions on discrimination experienced by transgender people. I appreciated the opportunity to meet with Joy Liddicoat last week to discuss how the consultation process has gone and the broad range of issues and views that have arisen. It was also very helpful to have Jack Byrne from your Office meet with the Deputy Commissioner and Director of Advocacy to discuss the background and management of complaints received about these issues. I commend the Human Rights Commission for undertaking this inquiry into this important issue.

I understand that your inquiry is focusing on the following three areas:

- experiences of discrimination;
- access to health services; and
- the barriers transgender people face when attempting to gain full recognition of their gender status.

Role of the Health and Disability Commissioner

The Health and Disability Commissioner is charged with the role of promoting and protecting the rights of health and disability services consumers as set out in the Code of Health and Disability Services Consumers' Rights (the Code). Under section 14(1)(d) of the Health and Disability Commissioner Act 1994, one of my functions is to make public statements in relation to any matter affecting the rights of health or disability consumers. I hope the following comments will assist your inquiry.

The Code of Health and Disability Services Consumers' Rights

The Code sets out the duties and obligations of health and disability service providers and codifies the rights of consumers. It applies to all health consumers. Of particular relevance to your inquiry are:

- Right 1 – the right to be treated with respect;
- Right 2 – the right to freedom from discrimination, coercion, harassment and exploitation; and
- Right 3 – the right to dignity and independence.

Since 1998, this Office has received a small number of enquiries and complaints relating to transgender issues. While the numbers of enquiries and complaints are not high (approximately 11), they are significant considering how small the transgender community is in New Zealand. In addition many incidents of discrimination or concerns about services provided may go unreported to my Office or directly to a local advocate.

The majority of the complaints received have involved an incident when a transgender person has felt discriminated against. I have set out below some examples of the types of complaints that have been received by this Office.

There have also been a number of enquiries or complaints regarding access to gender reassignment surgery and other related medical needs. Complaints about access and funding are difficult for me to comment on as funding policy and decisions are outside my jurisdiction. Yet the ability to access appropriate treatment and services is fundamental to your inquiry and funding decisions often affect this.

Examples of complaints

Discrimination

A complaint was received by a consumer about a staff member at the Endocrinology Department at a public hospital. The complainant was unhappy with the attitude of the receptionist at the department and had found her hostile. The complainant believed that she was being discriminated against by the receptionist because she was a transgender person. This matter was referred to the Human Rights Commissioner as it was felt the most appropriate way of dealing with it.

Another example was a complaint from a transgender person wishing to undergo gender reassignment surgery (male to female) who complained that the psychiatrist she was seeing was discriminating against her because of her transgender status. Another transgender consumer complained about a doctor who was dismissive and rude of the complainant's questions about the effect of his daily progesterone/estrogen regime.

Access and funding of services

I have had at least three enquiries regarding the funding of reassignment surgery and other treatment such as HRT therapy. While this maybe outside my jurisdiction, it does indicate that transgender people are experiencing difficulty in accessing the services they require.

Quality of services

I have had a small number of complaints about the standard of care provided to transgender people. In 2004 a complaint was received from a consumer who had undergone some exploratory surgery in Australia which involved temporary silicon inserts being placed in the perineum. On return to New Zealand complications developed and the complainant sought to have the implants removed. The complaint involved a number of issues, some that were outside my jurisdiction, however it predominantly related to the request by the complainant to have silicon implants removed under local anaesthetic when the doctors were not prepared to do this. My Office sought a response from the relevant District Health Board regarding the complainant's concerns. Ultimately I found that there was no breach of the Code as I considered the doctors had fulfilled their ethical obligations as well as their duties under the Code.

A recent complaint from a transgender consumer concerns complications following gender reassignment surgery. As this complaint is currently being assessed, I am not in the position to provide any further information.

Another complaint was received concerning the quality of a gender reassignment psychiatric report, which the complainant considered was biased and was not adequately explained to the complainant. The consumer in this case was dissatisfied that this report resulted in the decision to decline her request for gender reassignment. This complaint also involved problems with medication (premarin), communication and general lack of respect and concern for the consumer's wellbeing.

Although I have not found any of the providers involved in the above complaints to be in breach of the Code, I bring them to your attention as relevant to your inquiry. They indicate that transgender people face additional difficulties and barriers when accessing health services.

Advocacy services

The national advocacy service has assisted a number of transgender consumers in their dealings with health care providers and report a number of concerns regarding the treatment and care being provided. These concerns include transgender people:

- not being taken seriously and being treated in a dismissive way;
- being subjected to disrespectful and judgemental remarks and behaviour;
- being described by health professionals as “manipulative and demanding”; and
- having difficulty being referred to the appropriate expert or specialist.

Advocacy services have also received complaints from two prison inmates who have been refused access to their usual prescription hormones and/or other medication. The reason given was that this medication was deemed to be a lifestyle choice and therefore not permitted in the prison, even though both inmates were willing to pay for the medication themselves. These particular complaints were resolved and there was an undertaking by Corrections Managers to review the policy on this particular issue.

Thank you for the opportunity to participate in this significant inquiry.

Yours sincerely

Ron Paterson
Health and Disability Commissioner