Transgender Inquiry
Summary of Submissions
Uiuinga Taitamatāne, Taitamawahine Hoki
He Whakarāpopotanga o ngā Tono

Human Rights Commission
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Te Tīmatatanga: Introduction

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 want is just to be able to be myself. (Trans man)

My father took me out to buy a dress just before my 15th birthday. My mother knew I wasn't going to be her son. (Trans woman)

Transitioning nearly killed me and I consider myself a very strong person. It was like fighting on half a dozen fronts at the same time on your own. (Trans woman)

In Samoa the fa'afafine are the Kings and the Queens of my country. (Samoan community member)

I'm not sure how many trans people suffer physical harm, but all suffer emotional harm at some point in their journey. (Trans man)

I just wish my mother could see how people do not worry about me wearing a skirt. (Trans woman)

I grew up as a loner and isolated. I realised I was transgender through a process of elimination and a television programme. All of a sudden it made sense. (Trans man)

This is a Summary of Submissions received by the Human Rights Commission during the course of its Inquiry into the human rights of transgender people. In 2004, the Human Rights Commission consulted with more than 5,000 people to produce a stocktake report *Human Rights in New Zealand Today – Ngā Tika Tangata o te Motu.*

During the consultations, transgender people told the Commission their most important human rights were the right to security and freedom of expression, followed by the rights to work, health and education. The Commission realised the need for more information. The Commission's *New Zealand Action Plan for Human Rights - Mana ki te Tangata*, published in 2005, recommended an inquiry into discrimination experienced by transgender people.

This Inquiry focuses on three areas: experience of discrimination, access to health services and barriers faced by transgender people trying to gain full legal recognition of their gender status.

Between mid October and early December 2006 the Transgender Inquiry called for submissions and held eight days of hearings in Wellington, Central and South Auckland, Christchurch

and Dunedin. The Inquiry received 128 written or oral submissions with close to 200 people participating in the process.

The range of submissions shows that transgender people live in communities throughout New Zealand and come from all walks of life. Submissions came from teenagers to people in their seventies. Among the transgender people making submissions were farmers, business people, nurses, community workers, librarians, artists, students and academics, sex workers, project managers, trades people, parents and grandparents. 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. The Inquiry also heard from health professionals, community organisations, unions, the partners of transgender people, their friends and work colleagues.

Transgender people told the Inquiry that they strive to live a life of dignity. Many succeed. Often transgender people have struggled to come to terms with their identity. Many told stories of triumph over significant and, at times, heartbreaking adversity. Experience of discrimination and the denial of human rights were common themes.

This Summary of Submissions reflects the experiences of transgender people, explains terminology and lists solutions from submitters on ways to reduce discrimination and ensure they enjoy the same rights to dignity, security and freedom of expression and have the same access to jobs, good health and safety as other New Zealanders.

This summary does not include all material received. A detailed analysis of submissions, including those from government agencies, will be in the final report. The Summary of Submissions will be the basis for public meetings in four cities in April to inform the preparation of the Inquiry's final report to be published in September, 2007.

Feedback is welcome on the accuracy and coverage of issues raised. For information about the consultation meetings see the Transgender Inquiry website at www.hrc.co.nz/transgenderinquiry

Ngā Whakapuakanga Takotoranga Kupu: Terms of Reference and Terminology

Terms of Reference

The Terms of Reference for the Transgender Inquiry state that the Human Rights Commission will:

1. 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); and
   (c) barriers faced by transgender people when attempting to gain full legal recognition of their gender status.

2. Consider, as a result of these inquiry processes, whether to make recommendations on:
   (a) changes to legislation, regulations, policies and practices; and
   (b) other steps required to reduce the level of marginalisation experienced by transgender people.

Terminology

This section explains some of the terms used in this document.

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

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 (see Section 3).

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

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 or realignment surgeries.

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.

Sexual Orientation: An innate attraction to the same, different, or both sexes: may be heterosexual, homosexual, or bisexual.

People who made submissions used a range of terms to describe themselves, some of which were:

Whakawahine, Hinehi, Hinehua, Tangata ira tane: Some Māori terms to describe trans people, which are best understood within their cultural context.

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.

Queen: A MtF / trans woman (common usage).

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, Quari: Some Pasifika terms to describe trans people, which are best understood within their cultural context.

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

Many people raised the importance of language and wanted the autonomy to define themselves. Gender identity and its expression vary greatly and not all people fit neatly into one of the terms above or their broad descriptions. That diversity is acknowledged in this Submissions Summary. Where the document has needed to use a generic term it has adopted the more neutral terms "trans" or "trans people/person" to include all the people listed above and others who may face discrimination because of their gender identity.

1. Te Whakaiti Tangata: Discrimination

Human Rights Protections

Discrimination occurs when a person is treated differently from another person in the same or similar circumstances and suffers some detriment as a result. The Human Rights Act (HRA) 1993 protects people in New Zealand from discrimination on certain grounds (such as sex or race) and in certain areas (such as employment or education). In February, 2005 the Commission adopted the following policies:

i. discrimination against transgender people falls within the grounds of sex discrimination in the HRA;
ii. 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
iii. the provisions of the HRA apply to a transgender person who has commenced, or is somewhere through the process of taking decisive steps to live fully and permanently in the sex opposite to that assigned to them at birth.

A recent Crown Law Office opinion supports the view that trans people are covered by the HRA.

Trans people and other submitters were asked if they had experienced discrimination and, if so, to describe what had happened. Some submitters have chosen to lodge a complaint with the Commission.

The vast majority (83%) of submitters described some form of discrimination. In those 108 submissions, the common areas were:

- employment (75 submissions, 59%)
- government policies or practices (45 submissions, 35%)
- access to goods and services (43 submissions, 34%)
- education (33 submissions, 26%)

A smaller proportion of submitters mentioned concerns about:

- access to public places (15 submissions,12%)
- housing (14 submissions,11%)

In addition, 35 submissions, 27%, identified concerns about security, safety and harassment.

1A Te Mahi Oranga: Employment

Employment provides a sense of fulfilment and economic independence. The right to work was important for trans people. Denial of this human right had affected many submitters.

"He didn't fit in, he wasn't part of the team, he wasn't one of us" – you can't fight that kind of response. (Trans woman)

One submitter explained how she felt "disenfranchised from the world" when she transitioned and received 147 rejection letters

before gaining her job. Submitters stated they had been harassed, bullied, restructured out of jobs or moved away from front-line positions. In some cases they were explicitly told this was due to their gender identity.

Others described their fitness to work being questioned. One submitter decided to leave a job involving children, rather than face further humiliation. Unions highlighted the need for clearer legal protection to redress discrimination against people on the grounds of gender identity.

Some submitters had difficulties accessing sick leave when a manager perceived that trans surgery and health issues were due to "a lifestyle choice". Submitters who worked in professional jobs with more flexibility found it easier to take time off for such surgery.

Some people had received good support from their employer, workmates and union delegates when they transitioned. Submitters in this situation often provided managers with information about the transition process and they jointly planned how to inform other staff, change employment records and handle other issues. One large university had an EEO policy and programme that addressed issues for trans applicants and staff.

In some cases, employers or workmates might not be aware that a co-worker is trans. In one submission, a trans man was excited about a new job where people only knew him as a man. When someone disclosed his gender identity, co-workers started taunting him with his old female name and the employer requested a police check.

Obtaining police clearance is necessary for some occupations and requires people to disclose their sex/gender identity. Some felt this had prejudiced their chances of getting a job. Many submitters considered that their rights to privacy should be better protected and were worried information would not be held in confidence.

1B Nga Tikanga Hoko, Tuku Āwhina: Goods and Services

Discrimination in access to good and services limits trans people's ability to participate in society. If a trans person is treated unfairly by government agencies, this impacts on economic, social and cultural rights. Difficulty accessing insurance affects trans people's financial security.

Shops

When submitters received quality service from businesses they were often loyal customers. Others described substandard treatment in restaurants and public ridicule by theatre staff. One trans woman had difficulty finding a pharmacy that would provide her hormone prescriptions.

Sport

A number of submitters found it difficult to play competitive or social team sport once they transitioned. Some MtFs / whakawāhine described being excluded from participating in women's netball teams or from playing as a woman in mixed teams. Restrictions had also been placed on MtFs who had tried to play in men's netball teams. A waka ama team was threatened with disqualification for fielding fa'afafine.

Insurance

One submitter had been granted life insurance before transitioning but was subsequently asked to supply two letters from endocrinologists and then declined insurance "based on his medical record". He has a young child and understands the refusal bars him from receiving life insurance elsewhere. In another instance, a trans woman's application for life insurance was put on hold for a year and only granted after she asked what evidence existed to support that decision.

The absence of health insurance was significant for some trans people in light of difficulties accessing public health services (see Section 2).

Some questioned the blanket policy that health costs associated with being trans are excluded from health insurance because gender reassignment procedures are deemed cosmetic and elective, even when a policy covers pre-existing conditions. One submission queried whether it was discriminatory to provide at least partial cover to women for mastectomies, and to men with breast development (gynamastia), but to withhold cover for trans men who needed the same surgeries.

Government agencies

Some submitters were positive about the quality of services provided by their Work and Income case managers, who had identified assistance available to help meet the costs of counselling, psychiatric assessments or legally changing one's name. Other trans women had less positive experiences including being told "You're a man, wear trousers" and "You don't sound like a girl". Information about other government agencies is in other sections of this document.

1C Nga Wāhi Wātea: Public Places

The right to equality and freedom of movement means everyone should be able to enter and use public spaces such as shops, bars, changing rooms and toilets, without discrimination. Denial of this basic right has a significant impact on trans people.

Nightclubs and Shops

Submissions conveyed a history of whakawāhine, fa'afafine and Queens being treated with suspicion and excluded from nightclubs. In some cases this operated as a blanket ban on anyone stereotyped as a possible sex worker.

Trans women had been denied service at makeup counters and in women's clothing shops, including access to the changing room. One complaint was successfully resolved after mediation by the Human Rights Commission.

Facilities and Services

Health specialists typically require a trans person to live in their new gender role before recommending access to hormones or surgery. Part of that 'real life experience' requires using gender specific facilities and services such as toilets or changing rooms. Unless unisex facilities were available, this required MtFs to use "women only" facilities and FtMs to use "men only" facilities when they were easily identifiable as trans. Many had experienced difficulties being allowed to use the appropriate toilet or changing room, including being yelled at or chased out of the facilities.

I basically can't go to public toilets of either sex. (Trans woman)

This limited trans people's access to hotels and restaurants or to public swimming pools. Some submitters had success negotiating access. A trans woman was able to use the women's changing room at a local swimming pool after staff put up a curtain that gave her and other women greater privacy. Access to toilets was an issue at work. In some cases trans submitters had agreed to use a disability toilet when they started transitioning. Others felt uncomfortable using facilities required by disabled people.

1D Te Noho Pūmau, Mau Tūturu, Mahi Whaiwhaiā: Safety, Security and Harassment

Trans people, particularly early on in their transition, are vulnerable to harassment. This impacts on trans people's right to security.

The biggest thing I'd like to see this Inquiry address is the fear held by trans people. The first time I went out in public was like holding onto a leaf blowing in the wind. (Cross-dresser)

Submitters described instances where they had been verbally harassed and told they were a sexual pervert or paedophile. People recalled being spat at and having bottles thrown at them from cars. One trans woman had been beaten up by a flatmate while a number of submitters had been continually harassed by neighbours. Some submitters had been physically assaulted with fists, pieces of wood and broken bottles.

At least five trans people described sexual assault as an adult and in some cases were hospitalised because of their injuries. A trans man who was sexually assaulted was dissatisfied by the advice and questioning at a Sexual Health Centre, and did not feel they knew enough to accurately assess and treat his potential health risks.

1E Te Take Mātauranga: Education

Trans people often struggle at school. Children with trans parents may face harassment and discrimination. Discrimination at education institutions affects the right to education and limits opportunities to gain qualifications necessary for the workplace.

Early Childhood Education (ECE) and Primary Schools

A number of trans parents made submissions identifying the support that ECE and primary teachers have given their children, particularly when the parent started transitioning.

Secondary Schools

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

Gender specific uniforms and sports teams compounded the bullying and harassment faced by young trans people. In one case, a school and community denounced a mother for allowing her MtF child to wear female clothes at school. Another submitter legally changed her name when she was 16 with parental support. Her high school refused to reissue school reports under that name and required her to use the male toilets and changing rooms where she was harassed. Community organisations said there was a growing demand (from schools, parents and government agencies) for information and resources for trans youth and their families.

Tertiary Education

I hate being the only trannie at school [university]. (Whakawahine)

At least three trans people described difficulties gaining selection for undergraduate and postgraduate courses. Institutions, they said, were concerned they "might not fit in" or could find the course difficult as they were transitioning. A FtM described his struggle to have "Miss" removed from forms, when he had never been enrolled under a female name. Another trans man was continually harassed in the university's public toilets and resorted to using bed-wetting medication so he wouldn't need to use the toilet.

Trans students at one university approached their administration to clarify processes for changing one's name and sex on academic records. That process identified a willingness to ensure previous names were restricted so they did not appear on transcripts, and that trans students were able to apply 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. After discussion, Registry staff suggested a statutory declaration would suffice.

1F Nohonga-a-whare: Housing

Adequate housing contributes to the right to live in security, peace and dignity.

A number of submitters were positive about the support they received to obtain Wellington City Council flats. This was appreciated as a number of people had been turned down, when applying for a room in a flat, once they disclosed they were trans. Some submissions raised the question about whether there were safe, appropriate refuges and emergency housing for trans people.

Some submitters had been required to show their birth certificate for real estate agents to check on their tenancy history. This disclosed the transgender status of anyone who had not been able to legally change their sex. Some submitters felt they had been treated less favourably once those details were revealed.

1G Te Tikanga Whakawā: Justice System

The right to justice requires equitable and fair legal processes that provide redress for trans people who face discrimination and harassment, and protect their broader legal rights. Police and prison facilities are sex segregated and present challenges for trans people who are arrested, tried or imprisoned.

Police

Submitters reported a lack of clarity about police procedures for establishing gender identity, which in turn affected sex-specific practices including body searches and placement in holding cells.

A number of submitters described being questioned by Police at checkpoints because their driver's licence details did not match their physical presentation. Submitters appreciated it when these exchanges were handled sensitively. However, in other examples, they were treated with suspicion.

Some submitters had approached police after being harassed when people knew or thought they were trans. Those in small provincial towns felt particularly vulnerable, feared additional exposure and did not know where to seek support. A number considered that local police had not considered their complaints seriously. A submitter from a major city was verbally harassed on a regular basis. She eventually complained to the Police. Their intervention stopped the behaviour, which the submitter attributed to a clear message that persistent harassment was illegal.

The Inquiry received submissions describing how trans women were chased in the street by police, referred to by their previous male names and addressed as Mr, searched by male police officers and held in prison cells with male prisoners. Some submitters spoke positively about recent changes in the relationship between police and trans people, including trans people's participation in police training sessions.

Courts

As outlined later in this document, the majority of trans people were not able to legally change their sex on their birth certificate. This raised the issue of recognition of the new gender identity by courts if a trans person was arrested or appeared as a witness. Two employment lawyers described the vulnerability of trans people in legal hearings. They considered it difficult to keep a client safe from prurient questions from counsel unless judicial officers established and maintained boundaries throughout the hearing.

Submitters were concerned that they might be treated unfairly in Family Court processes. For some, this was based on personal experience (in domestic violence as well as custody and access cases). Two submitters who had appeared before the Family Court considered their gender identity had been raised inappropriately by lawyers, Counsel for Child, a Court Registrar and a court-appointed psychologist. Others had been threatened by partners, ex-partners or family members that they could lose access to their children or grandchildren because they were trans.

Department of Corrections

The Department of Corrections has a national policy on transgender prisoners. Those submitters with experience visiting trans inmates or providing support when people left prison, had a good relationship with prison staff. Concerns remained about the potential vulnerability and isolation of trans inmates. One submitter said these were heightened if transgender inmates were moved between prisons (in some cases due to harassment by other inmates) and/or sent to parts of the country where they had no family or community support.

The Inquiry acknowledges the complex issues around sex segregated facilities such as prisons. The inability for most trans people to legally change sex means a trans woman is likely to be housed in a male prison and a trans man in a female prison. The Inquiry received submissions from trans women, Queens, whakawāhine and fa'afafine who had spent time in male prisons. Issues included:

- Limitations on their ability to be recognised as female (for example, enforced male dress codes and use of previous male names even when inmates legally had female names).
- Insufficient access to medical support such as the inability to get hormones unless they had been prescribed prior to sentencing.
- Lack of safety within prison. One submitter stated: "Isolation was a double penalty". Others suggested it was seen as easier to place trans inmates in segregated wings, often with child sex offenders than to provide a safe environment within mainstream prison wings.

Submitters' Solutions
To Reduce Discrimination and Stigma:

- *provide education and information about transgender issues to a wide range of audiences including employers, workers, communities, government agencies and health professionals. Specific information needs are to:*
  - *describe the diverse experiences of trans people;*
  - *explain how gender identity is distinct from sexual orientation; and*
  - *explain the issues involved in transitioning;*
- *ensure government agencies:*
  - *develop EEO policies for trans staff;*
  - *provide unisex facilities;*
  - *design forms so that clients have more options than just male or female when providing sex data;*
  - *train staff to work with trans clients and develop examples of best practice; and*
  - *draft policies and practices to address: access to health care, ability to legally change one's sex, levels of violence against trans people (including trans students) and issues for trans prisoners;*
- *amend the HRA to include gender identity as a specific ground of unlawful discrimination and provide clear information about rights and responsibilities; and*
- *protect rights to privacy (see Section 3).*

2. Te Ora Tinana: Health

The availability, accessibility, acceptability and quality of health services impact on trans people's right to health and on their health outcomes. Trans people have specific health needs including those linked to the process of transitioning.

A total of 78 submissions (61%) made comment about access to general health services, while gender reassignment services were raised in 102 (80%) of the submissions.

2A General Health Services

Trans people have multiple vulnerabilities when unwell that affect access to healthcare. (Lawyer and health worker)

General Practitioners (GPs)

Some submitters had received good support from their doctor. However, slightly more than a third of submissions (43) said general practitioners lacked specific knowledge or awareness about health issues for trans people.

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)

Trans people and health professionals described judgmental or dismissive comments made by GPs and less than adequate attention to health needs. For example, health professionals described how trans people would be "shunted away". There were a number of instances where doctors refused to provide services to trans people on religious or moral grounds.

Hospitals

Trans people described being addressed by the wrong pronoun or asked inappropriate questions at out-patients or emergency departments. In contrast some people developed good relationships with staff once admitted to hospital. The issue of changing details on hospital records is discussed in Section 3.

Mental Health Services

Wellington health professionals emphasised the need for mental health services to provide support for children and young people and their families when gender identity issues arise. Doing so would reduce the risk that more acute services might be needed later.

One submitter criticised the sex role stereotyping and homophobia of a mental health facility. Other trans and intersex people who had spent time in psychiatric or mental health institutions described what they considered was inappropriate use of behaviour modification treatment, electroconvulsive therapy (ECT) and prescription drugs.

A trans woman at a community alcohol and drug treatment facility had her gender identity disclosed to other residents and was required

to discuss personal details about being transgender. The submitter left the programme and subsequently received an apology from the local DHB with a promise to investigate her complaint.

2B Gender Reassignment Services

A total of 102 (80%) of the submissions referred to issues related to gender reassignment services. These described trans people's experiences with:

- GPs (about gender reassignment) - 69 submissions (54%)
- Gender reassignment surgeries - 61 submissions (48%)
- Counsellors, psychiatric assessments and mental health services - 59 submissions (46%)
- Hormones - 55 submissions (43%)
- Standards of care - 39 submissions (30%)
- Funding –17 submissions (13%)

Submissions indicated wide variation in the availability and quality of health services and specialist care. A common theme was the high level of inconsistency or "adhocracy". Submitters were unclear what services District Health Boards (DHBs) were required to provide and whether those without appropriate specialists were obliged to make a referral to another DHB. Trans people acknowledged the need to ration health services but felt current practice excluded trans people from access to gender reassignment services, without assessing their specific needs.

Health professionals were frustrated by the inability to provide services due to limited funding or clarity about what services could be provided publicly.

Submissions indicated that trans people under a DHB's care for other reasons, or those who "presented well", found access easier. There were rare cases where people had been provided with an integrated package of care with access to counselling, a hormone specialist, psychiatric assessment, and initial gender reassignment surgeries through the public health system. Most submitters had found it difficult to discover how to start transitioning.

One submitter provided the following model depicting trans people's needs at different stages of the ideal transition process. In his opinion, this ideal was rarely achieved.

Stage	Aim	Examples of Services
Self realisation	Safety: • Internally (from self harm) & • Externally (protection from harm by others)	Counselling or Psychotherapy
Transition	Ability to live and work in your gender of choice	Ongoing counselling, other health care e.g. hormones and chest surgery for FtMs, electrolysis for MtFs
Completion	Quality of life	Other Gender Reassignment Surgeries

Trans submitters felt they needed to advocate strongly on their own behalf, at a time when they were often drained by their transition. Submissions strongly conveyed the need for uniform standards of care and treatment

pathways. Most cited the Harry Benjamin Standards of Care developed by the World Professional Association for Transgender Health (WPATH). Some submitters suggested these standards might need to be modified for New Zealand due to an insufficient number of qualified specialists. Health professionals expressed considerable interest in bringing people together to develop national standards, drawing on Australian expertise.

General Practitioners

A good GP was pivotal in helping a trans person access secondary health services for transition and could keep an overview of their health and wellbeing. A minority of submitters had such a relationship with their GP.

You have to arm yourself to go to the doctor. You've got to know your stuff. It shouldn't be like that. (Trans man)

Health professionals and community groups described how trans people had difficulty finding advice, support, medication and referrals. Trans people in smaller towns faced the financial and time pressures of traveling to see an appropriate doctor.

Mental Health Services

Submitters welcomed support from a limited number of counsellors experienced in gender identity issues, however many could not afford their services. Submitters raised the need for counsellors to understand issues associated with the suppression of identity over a long period.

We have lives that we've built that we're in the process of tearing down, and you need help. (Trans woman)

Trans people and health professionals considered that some treatment models used by counsellors were inappropriate including those that attributed gender identity issues to childhood trauma or addiction or viewed them negatively from a religious perspective.

Trans people seeking to medically transition, using hormones or surgery, usually require at least one psychiatric assessment before being able to access public or private services. The process includes being diagnosed with gender dysphoria or Gender Identity Disorder (as defined by either the American Psychiatric Association's DCM IV or the World Health Organisation's ICD10). Many submitters were critical that their trans identity was equated with a mental illness diagnosis.

Trans people and health professionals raised concerns about the difficulty of obtaining a psychiatric assessment or psychological support through the public health system. The notable exceptions were a community health organisation and a student health service that had staff able to do psychiatric assessments, for minimal or no charge.

Most DHBs had very few relevant specialists, resulting in long waiting lists. Services required by trans people were accorded a low priority or considered to be outside the DHB's contractual requirements. This raised significant concerns for health professionals.

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. We would welcome a clear statement or direction from the Commission about consumer rights in this regard. (Mental health professionals)

A number of DHBs have ceased to provide psychiatric and psychological assessments for trans people. In many regions, such assessments are required before a trans person can access hormone treatment.

Unfortunately the psych department has withdrawn their involvement which essentially means we are no longer seeing any transgender clients in

the public hospital system. Health services for transgender people are now only available via the private health system in Christchurch. This carries the barrier of costs. Access to an initial psych review would allow us to re-establish the clinic service for gender reassignment. (Hormone specialist)

Health professionals in Wellington were concerned that thirteen people had been waiting over a year for an initial psychiatric assessment, which ideally should take place at the beginning of the transition process. Private psychiatric assessments were financially beyond the means of many trans people. Some specialists found it ethically challenging to undertake assessments knowing there was no funding for trans people to receive counselling or psychological support.

Submissions raised concerns about stereotypes expressed during some psychiatric assessments. One trans woman stated she had been criticised for not wearing high heels and a dress. She asked "Why can't I be a MtF transsexual and a bit of a bra-burner?"

Hormones and Endocrinologists

Some hormones can only be prescribed with specialist approval from an endocrinologist. Submitters had difficulty accessing an endocrinologist through their DHB. In Auckland there was a perception that some endocrinologists refused to see trans people on ethical grounds.

Where an endocrinologist was available, there was considerable variation in practices between and within DHBs as to what steps were required before someone could be approved to start hormones. Submitters described significant variations in later treatment.

Endocrinologists were often the first DHB specialist that trans people saw and could play a significant role in setting up referrals to other DHB specialists such as psychiatrists and surgeons. For a small number of submitters, this had resulted in a well-coordinated approach to their transition. Others described their frustration at extensive delays when endocrinologists did not make agreed referrals. There are limitations in the range of hormone treatments that are publicly funded and some submitters had to self-fund the only hormone that was compatible with their specific medical needs.

Other Non-Surgical Services

MtF submitters described other health services and products that were important so they could live and be accepted as female. These included permanent removal of facial or body hair, voice therapy to raise their voice, and purchasing wigs if they had hair loss prior to transitioning. Submissions mentioned the additional cost of such treatments. One submitter had paid $18,000 for hair removal, while wigs could cost up to $500 each. Other submitters could not afford to have these treatments or undergo voice therapy.

I'm more male looking than female. I'm trying to change when I have more money and get a wig. (Trans woman)

Gender Reassignment Surgeries

The term Gender Reassignment Surgery (GRS) is often used to describe surgeries that reconstruct a trans person's genitals. However there is a wide range of gender reassignment surgeries that may be undertaken by MtF and FtM trans people as part of their transition. The most commonly mentioned surgeries by submitters were breast /chest and genital reconstruction (for FtMs and MtFs) and hysterectomies for FtMs.

Chest / Breast Surgery

FtM: Mastectomy

Many FtM submitters had bound their chest tightly for years, until they were able

to have surgery to create a male chest. Submissions 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.

Psychologically a lot of FtMs become stealthy and very isolated and disappear because physically we feel so uncomfortable in our bodies. (Trans man)

For these reasons, many submissions considered chest surgery was a high priority for trans men. At least five submitters to the Inquiry had approached their local DHB investigating whether a mastectomy was available through the public health system. These resulted in a number of DHBs confirming that trans men seeking this surgery would not reach the top of the waiting list and therefore it was not worth applying.

He said there's no way I can fit you in because I've got ladies who have cancer. (Trans man)

This meant private surgery was the only option for most submitters as health insurance does not cover gender reassignment procedures. Two submitters had received chest surgery through a public hospital. In one case eligibility was based on different criterion (severe long-term back pain), while the other procedure was done at the discretion of a visiting surgeon.

MtF: Breast implants

Some trans woman explained that they had very limited breast development on hormones and required breast implants. These surgeries were funded privately.

Hysterectomy

FtM: Hysterectomy

Some FtM submitters had applied to their DHB for a hysterectomy to relieve discomfort with their body and pain that was possibly a side effect of male hormones. A number had been informed that hysterectomies were not available to trans men through their local public hospital. For example, one submitter tabled this 2005 response from an Auckland endocrinology clinic:

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 Auckland. This will probably come as no surprise to you. (Health professional)

One FtM had received a hysterectomy on other medical grounds.

Genital Reconstruction

Submissions that included overseas statistics suggested that only a small minority of trans people will have genital reconstruction surgeries. For many the obstacles are financial. Others chose to not have these surgeries or were unable to do so for medical reasons.

Many trans people identified these surgeries as an area of need but considered the public health system should first provide greater support for people in earlier stages of the transition process. Submitters who had undertaken genital reconstruction surgeries also conveyed how significant this final stage of their transition process had been.

MtF: Orchidectomy

An orchidectomy is the surgical removal of the testes and can be performed separately from other MtF genital reconstruction. Some MtFs and health professionals considered there were good medical and economic reasons for performing orchidectcomies. After this operation a MtF can stop or reduce her intake of expensive anti-androgen hormones avoiding the potential side effects.

MtF: Vaginoplasty

Genital reconstruction for MtFs, vaginoplasty, involves removing the penis and testes and constructing a vagina, clitoris and labia. MtF

submitters often mentioned that there was only one New Zealand clinic performing these operations and that the sole procedure it offers is used in a small minority of cases overseas. Some submitters experienced significant complications arising from this technique.

FtM: Metatoidoplasty or full phalloplasty

These operations for trans men create a micropenis (metatoidoplasty) or a full phallus (phalloplasty), redirecting the urethra to the tip of the new genitals and creating testicles.

Both procedures involve a series of separate staged operations and complications are common. Neither procedure is available in New Zealand. FtM submitters who had undergone some or all phalloplasty operations overseas described the mounting costs of travel and surgeries coupled with no income while they were away from work. Submitters had also experienced difficulties obtaining follow-up care in New Zealand.

Funding

Almost all submitters who had undergone gender reassignment surgeries had paid privately. Some sold assets or used other resources while other people described saving for years or working multiple jobs to have an initial operation.

It took six years to save up [for chest surgery]. I know I'll never be able to save up the cost of a full operation. (Trans woman)

A number of people travelled to Thailand for surgery because the operations were less expensive and experienced surgeons used the latest techniques. Some submitters stated that ACC funding should be available to cover gender reassignment costs in cases where there had been medical misadventure. This includes operations to correct complications from GRS or a previous operation for an intersex condition.

The Special High Cost Treatment Pool (SHCTP)

The SHCTP is funding set aside by the Ministry of Health for one-off treatments not otherwise funded by the public health system. DHB specialists apply to the Ministry of Health on a patient's behalf. In 2004 GRS was added to the list of surgeries that could be funded from the SHCTP with a maximum number of surgeries set at one FtM and three MtF procedures every two years. The MtF surgeries were allocated to the one NZ clinic doing GRS operations at that time while the FtM surgery was to be performed overseas.

Submitters were concerned there was limited information and transparency about the process for applying to the SHCTP. Some people were not aware of the SHCTP or were advised against applying because the round of surgeries had already been allocated. Other submitters questioned whether a 'waiting list' existed for the MtF surgeries, or whether the surgeon had total choice about who was selected. Trans people faced delays if they could not access a specialist to make the application on their behalf.

I waited the best part of one year simply to see a public health endocrinologist for a referral to the list. (Trans woman)

Applicants were required to pay for initial psychiatric assessments. Submitters described the high cost involved, especially when travel within New Zealand or overseas was required.

A number of MtF submitters had been concerned that there was no patient choice about the surgeon or surgical procedure available. Many submissions suggested that there should be an option of applying to have MtF genital reconstruction overseas as this would give access to experienced surgeons and a wider range of procedures for a lower cost.

FtMs described the time and costs in applying for treatment through overseas surgeons (as many required applicants to undergo psychiatric and other assessments at their clinic). Some submitters had been told that acceptance by an overseas clinic was necessary before they could make an application to the SHCTP. They considered this was a significant financial barrier and effectively excluded those on low incomes from applying to the SHCTP.

Submitters' Solutions
To improve access to and quality of health services:

- *develop a national policy on health services available for trans people through the public health system;*
- *ensure mental health services are available for trans people;*
- *improve health professionals' knowledge and training about trans health issues;*
- *ensure adequate staff and resources are available within DHBs; and*
- *fund trans-specific health services rather than adding them to the work of other organisations.*

To improve gender reassignment services:

- *determine agreed standards of care in line with international best practice;*
- *establish clear treatment pathways recognising the full range of health services required by someone who is transitioning;*
- *ensure appropriate services required for trans people to live and work in their gender identity are available through the public health system;*
- *consider the establishment of a centre of excellence for gender reassignment services;*
- *extend the SHCTP funding to include a wider range of gender reassignment surgeries and allow MtF and FtM surgeries to be carried out overseas where appropriate;*
- *increase transparency about the SHCTP funding;*
- *create a government administered loan system for gender reassignment surgeries; and*
- *encourage insurance companies to cover gender reassignment services.*

3. Te Mana Whakawā Tāne, Wahine, Hua Atu: Legal Recognition Of Gender Status

Trans people's right to security may be compromised when their sex is not legally recognised. Inappropriate, unnecessary or unauthorised disclosure of gender related information undermines the right to privacy and freedom of expression.

This section looks at how personal information about someone's sex or gender is collected, stored, used, changed and removed. Those documents may be:

- *Private sector records:* for example bank records, employment details, tenancy agreements, utility bills, library and video club details.
- *Government records:* for example IRD, ACC and Work and Income records, National Health Index number and electoral roll details.
- *Legal documents:* for example birth certificates, passports, citizenship, marriage and civil union records, and driver's licences.

Seventy three submissions (57%) included comments about legal documents. Records from other government agencies resulted in 29 comments (23% of submissions) and other, largely private sector, records were mentioned in 24 (19%) of the submissions.

Submitters noted that they are routinely required to fill out forms indicating whether their sex (or sometimes their gender) is male or female. For most people biological sex and gender identity are closely linked. For example, most people born with female bodies have a female gender identity.

Submitters explained this was not the case for trans people and two issues arise when they are asked to put sex or gender data on forms, namely:

- there can be a conflict between a person's gender identity and the sex details requested (particularly if they are required to show a birth certificate to verify their legal sex) and
- when forms only include two options (male or female), many trans people are unable to accurately describe:
  - their physical sex (if they are part way through a medical transition) or
  - their gender (if they identify as transgender or genderqueer).

Submissions have raised significant issues about people's ability to change their sex details on various records, including a number that relate to the Privacy Act 1993 and the use of information that discloses a trans person's identity. These include inappropriate, unnecessary or unauthorised disclosure of sex or gender related information either in public places (such as waiting areas) or to third parties. In some instances, inappropriate disclosure "destroyed lives" as people lost jobs and relationships. Even a very public trans person stated "I suffer anxiety about disclosure. I think everyone does".

Therefore, submitters questioned the purpose of collecting sex or gender data, particularly if it was confined to just two options (male or female). Where such data needs to be collected, providing a third option (transgender) and allowing people to tick multiple boxes was recommended. For example this would enable a MtF to tick female and transgender when she starts transitioning, though she might wish to simply tick female at a later date.

Some submitters considered details about their physical sex or gender identity had been collected without their knowledge or consent. Conversely, trans people who had shifted to New Zealand from overseas described the advantages of not having a paper trail in their old name and gender.

Submissions by younger trans people highlighted their reliance on photo IDs because they were routinely required to show proof of age in order to enter nightclubs or buy alcohol and cigarettes. Therefore the ability to change sex details on an Identity Document (ID) card, or to have a photo ID that did not require such details, was particularly important.

Private sector records

Banks

Submitters indicated that there was usually no problem changing their bank details once they had legally changed their name. Problems arose where the name on their birth certificate had not been changed (in some instances because it was gender neutral). In a few cases, banks would not change a submitter's title (for example from Ms to Mr) until that person was able to legally change the sex details on their birth certificate.

Tenancy agreements

A trans woman was required to provide all previous names for a rental company to run a check through a tenant database. This procedure disclosed her gender identity and the submitter described being treated less well. A FtM rented the same house over a period when it had three different owners. The rental agreement retained his old name and sex which he found awkward when meeting a new landlord.

Government records

Inland Revenue Department (IRD)

Submitters were surprised and pleased how easy it was to change their name and title on IRD records.

Work and Income

A number of submitters had been able to change their Work and Income records. A trans person in a provincial town had tried unsuccessfully to get her name changed on her file. For financial reasons, she had not legally changed the name on her birth certificate but lived as a woman. This submitter told of the "exceptional help" she had received from a new case manager who "immediately put my name into the computer properly. She had me sign a form stating that it was at my request because I was offended when referred to by my male name. This is vital support in the outside world".

National Health Index and Hospital Records

Many submitters were unclear about the process required to change their individual hospital records and how those records were linked to their National Health Index (NHI) number. In one case, an Auckland psychologist arranged for a trans person's NHI records to be changed easily. Despite attempts by clinicians, most submitters had been unable to update their records. This meant a person's transgender status was potentially identified whenever they accessed other health services, and in some cases had been included on ACC forms sent to employers.

One trans man who transitioned overseas ten years ago was listed as female on hospital records by an endocrinologist, effectively removing any privacy about his transgender status. He was mortified when in every subsequent encounter with health professionals he was referred to as female.

Electoral roll

One submitter, who was not yet able to legally change his sex but lived as a man, was informed that he could not change the title on his electoral details to "Mr". He was very uncomfortable about having to present a Vote Card that would identify him as "Ms".

StudyLink

Many submitters had difficulties trying to change their name and title on StudyLink records. This had been stressful particularly when it resulted in delays in payment of student allowances.

Driver's Licence

Sex is not printed on a driver's licence but details are collected and appear when authorities, such as the Police, run a check. Many submitters sought to get the photo and name changed as soon as they had legally changed their name. Most had found the process easy. Those who had asked for the sex details on the database to be corrected at the same time, often had no difficulties. A small number of submitters were told they could not change their sex details and were embarrassed when this conversation occurred at a public counter. When people had yet to change their legal name, questioning at police checkpoints had sometimes been a stressful experience. One police officer explained that police may be suspicious if a person's stated name does not match their legal name or sex. Her advice was for people to be up front about their situation.

Passport

Some submitters were not aware that they had the option of having a passport issued with their sex omitted once they were living in their new gender. These passports traditionally included a dash (-) in the sex field, which has now been replaced by a (X). Trans people described their experiences travelling on a (-) or (X) passport. For a significant number, this aspect of their passport had been questioned by Immigration officials at border controls in New Zealand and overseas. This usually resulted in embarrassment and delays and in some instances luggage or body searches.

Many trans people expressed concerns about travelling on a (X) passport. Some submitters considered it would be harder to explain their 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. One submitter said that a passport was about "the basic principle of keeping citizens safe and not knowingly putting you in danger". In his opinion, a (X) passport did not fulfil that criterion.

Trans people described difficulties having (X) passports accepted at airline check-in counters in New Zealand and overseas. An airline staff member who attended a Commission briefing about the Inquiry suggested this is because airline computer systems usually only allow a male or female option in the sex data field. Some trans submitters had strong negative views about (X) passports as their only option:

I don't want to be in the middle. I've been in the grey area for too long. (Trans man)

The small number of submitters who identified as androgynous, "gender neutral" or "genderqueer" welcomed the option of a (X) passport.

Citizenship Record

Some submitters who had undertaken gender reassignment were disappointed that they were unable to change the sex details on their Citizenship Certificate if it was issued prior to full gender reassignment. They were aware that their only option was to obtain an updated Evidentiary Certificate.

Marriage Record

The Inquiry received a number of submissions from trans women who have been married for many years and were concerned that, in order to legally change their sex, they must dissolve their marriage because same-sex marriages are not legally recognised in New Zealand. These submitters were aware that they had the option of registering as a civil union, but felt that this downgraded the status of their relationship.

Birth Certificate

People had found it relatively easy to change their name on their birth certificate. There was a considerable number of submissions outlining trans people's concerns about the requirements necessary before they could legally change their sex. The bulk of these submissions make specific reference to the provisions contained in section 28(3)(c)(i)(B) of the Births, Deaths and Marriages Registration Act (BDMRA) 1995, namely the requirement that the person:

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

While this provision does not require full gender reassignment surgeries, the common perception by submitters was that such surgeries were necessary before the Family Court was likely to grant a Declaration confirming their change of sex. Often this view was based on advice given by lawyers or Family Court and Births, Deaths and Marriages office staff. Submitters said this was a problematic threshold for many trans people particularly those for whom surgery is not available, too costly, too dangerous, unnecessary or not desired. This meant many submitters considered their legal identity documents were inaccurate as there was an obvious difference between how they looked, felt and were treated by others, and their legal sex.

Being transgender is an identity, regardless of surgery and people need to recognise that. (Trans organisation)

Most submitters were not able to legally change their sex (and therefore remove previous names) from their birth certificate. Many submitters described their fears about being identified as trans once they presented this birth certificate. Some felt they had been discriminated against once this information had been provided. A submitter who had a new birth certificate in his new sex and name (with no previous names listed) was concerned he might still be legally required to provide past names for police vetting purposes. This would disclose his transgender status to future employers.

A number of submitters questioned whether those drafting the BDMRA were aware of the additional barriers that section 28 produced for trans men. Given these issues, some trans men had applied for a Family Court Declaration without having undertaken all gender reassignment surgeries. A small number of these submitters had been successful and felt this was because the medical evidence supplied in their application had emphasised the irreversible effects of hormones and surgeries that they had undertaken. Many other submitters were unaware of this option as the relevant Family Court decisions were

not publicly available. Others noted that the process was costly and, in the absence of a clear legal right, required legal representation and supporting letters from a range of specialists, with no clear guidelines about the grounds on which decisions were likely to be made.

Some FtM submitters discussed the wider impact of not being able to legally change their sex on their birth certificate. One, whose female partner lived in the United States, could not have his relationship recognised until he was legally male. As a result he was unable to live in the USA with his partner and their children. Another submitter had received independent legal advice that he could not be listed as the father when his child's birth certificate was issued and nor could those details be changed retrospectively once he became legally male.

Many submitters have asked the Inquiry to consider the approach taken by the United Kingdom in the Gender Recognition Act 2004, where gender reassignment surgery is no longer a prerequisite before someone's sex can be changed on their birth certificate. In order to qualify, trans people must show that they have been diagnosed with gender dysphoria (or have had gender reassignment surgery), have lived in their acquired gender role for at least two years and intend to do so permanently for the remainder of their life.

Inquiry submissions have highlighted some procedural difficulties experienced by New Zealand citizens, born in the United Kingdom, who have tried to gain a UK Gender Recognition Certificate. These include difficulties finding someone eligible in New Zealand to verify evidence that will be submitted to the UK Gender Recognition Panel. Some submitters suggested that the New Zealand gender recognition process (a Family Court declaration) should be extended to cover those New Zealand citizens who did not hold a NZ birth certificate. This type of Family Court declaration would provide the verification required to change sex details on birth certificates held in other countries.

Submitters' Solutions To Improve the Legal Recognition of Gender Status:

- *omit sex from forms where it is unnecessary;*
- *provide more options than just male or female when sex data needs to be collected;*
- *establish transparency and consistency about the process for changing one's sex data on public and private records;*
- *ensure privacy of old records;*
- *ease the process for changing sex details on a birth certificate;*
- *adopt a similar approach to the UK Gender Recognition Act;*
- *remove the provision that prevents a married person from changing their sex on their birth certificate;*
- *allow someone's sex to be changed on their Citizenship record (rather than on a separate Evidentiary Certificate); and*
- *enable a Family Court Declaration confirming change of sex to be issued for New Zealand citizens who do not hold a New Zealand birth certificate.*

4. Te Ruaruanga Taha Wahine, Taha Tāne: Intersex Issues

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. In my eyes it is wrong and it should never have been done to me. I would have liked to be left to make up my own mind. (Intersex person)

A number of people with intersex conditions made submissions. They used a variety of terms to describe themselves including intersex, intergender, gender neutral and/or transgender.

We are the hidden people. It's seen as a medical problem to be fixed. The intergender movement was started by intersex people trying to claim the wholeness of themselves. If they don't wipe us out, it will be interesting to see how people start redefining themselves. (Intergender person)

Submitters expressed major concerns about the effects of medical interventions performed because their bodies had reproductive or sexual anatomy that could not be easily defined as male or female. Some were operated on as infants or young children and said their parents were not always aware of the procedures involved or the ramifications. In other cases, particularly when intersex conditions developed after puberty, submitters had undergone surgeries as an adult. Some did not consider they were given sufficient information to provide informed consent.

Many described the shock of finding out that they have an intersex condition, particularly if that information had been withheld for many years. Often submitters felt isolated. A number of submissions noted the secrecy and shame associated with intersex conditions made intersex children vulnerable to sexual abuse.

In most cases, submitters had not been able to access medical records containing details of the treatments they had received.

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)

Many questioned the appropriateness of care, including the side effects of hormones and inadequate reassurances that surgical procedures would make their physical body unambiguously male or female. One submitter who had undergone reconstruction surgeries recounted 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)

Some intersex submitters were taking hormones or seeking surgery to reverse medical interventions performed on them

as children. Submitters noted that there was public funding to provide surgical treatments to treat their intersex conditions, but no funding to reverse those procedures.

Submitters' Solutions
To improve the human rights of intersex people:

- *intersex people and families should be spoken to honestly about intersex conditions and receive counselling and support;*
- *except in the case of medical emergencies, intersex children should not be operated on to remove ambiguous reproductive or sexual organs;*
- *medical records should be retained intact so children can make informed decisions at a later date;*
- *improve medical training on intersex conditions;*
- *ACC or health funding should be available to reverse procedures performed without informed consent, in cases of medical misadventure, or when an adult's gender identity is in conflict with the biological sex they were assigned as a child; and*
- *the Human Rights Commission should conduct a specific inquiry into issues for intersex people.*

Human Rights
Commission

Te Kāhui Tika Tangata