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Human Rights Commission
Te Kāhui Tika Tangata



PRISM:

Human Rights issues relating to Sexual Orientation, Gender Identity and Expression, and Sex Characteristics (SOGIESC) in Aotearoa New Zealand - A report with recommendations

June 2020

Executive Summary

Prism explores six human rights issues relating to people with a diverse sexual orientation, gender identity and expression, and sex characteristics in Aotearoa New Zealand. While not exhaustive, this analysis reflects the voices of the SOGIESC diverse people who attended the Commission's consultation hui in 2018. The purpose of this paper is to introduce these six human rights issues and to assist in providing a baseline understanding for greater discussion and collaboration.

Prism is an original contribution to the human rights landscape in Aotearoa New Zealand. It is not common for these rights to be discussed with explicit regard to people with a diverse sexual orientation, gender identity and expression, or sex characteristics. These rights are enshrined in international covenants, conventions, and declarations. All people, including SOGIESC diverse people, are entitled to the full enjoyment of these rights.



Summary of Findings

THE RIGHT TO FREEDOM FROM DISCRIMINATION (ARTICLE 2, UDHR)

- The Human Rights Act 1993 does not provide explicit legal protection from discrimination with regards to gender identity, gender expression, or sex characteristics.
- Overt and subtle forms of discrimination are widespread against people with an actual or perceived diverse SOGIESC, and they are more likely to become victims of crime.

THE RIGHT TO INFORMATION (ARTICLE 19, UDHR)

- Unmet information needs are a considerable obstacle for the identification and resolution of issues concerning people with a diverse SOGIESC.
- Data collection does not currently reflect a human rights-based approach. This is particularly clear in response options that limit diverse answers and the ability of SOGIESC-diverse people to be counted.

THE RIGHT TO RECOGNITION BEFORE THE LAW (ARTICLE 16, ICCPR)

- New Zealand's official identity documents contain sex/gender information which can be difficult to correct for transgender, non-binary, and intersex people.
- The human rights principle of self-declaration for identity documents is not yet fully implemented; it applies for passport and drivers' licence records but not for birth certificates.
- The current process to amend sex on a birth certificate requires meeting a medical threshold and the involvement of the Family Court, presenting barriers to having a child, enrolling in school, getting married, and other areas of life.

THE RIGHT TO THE HIGHEST ATTAINABLE STANDARD OF HEALTH (ARTICLE 12, ICESCR)

- Surgical interventions not required for the preservation of life continue to be performed on people with diverse sex characteristics before an age at which they can consent to these procedures.
- People with a diverse SOGIESC have poorer physical and mental health outcomes than the general population.
- Healthcare practitioners and providers often lack the training to meet the needs of SOGIESC-diverse service users.
- Gender affirming healthcare is difficult to access and highly dependent on geographical residence.

THE RIGHT TO EDUCATION (ARTICLE 26, UDHR)

- Young people have a right to learn about diversity in SOGIESC. The New Zealand Curriculum allows for such learning within health education, but this is not adequately integrated into practice in schools.
- For youth with a diverse SOGIESC, school is often not a safe environment in which they can thrive and learn.
- Youth with a diverse sexual orientation or gender identity are, respectively, three and four-and-a-half times as likely as other students to be bullied.

THE RIGHT TO WORK (ARTICLE 23, UDHR)

- People with a diverse SOGIESC experience discrimination and bullying in the workplace.
- The most common complaint received by the Human Rights Commission on the ground of sexual orientation is related to discrimination in employment.
- A significant percentage of people with a diverse SOGIESC do not feel safe enough or fear discrimination at work or when applying for jobs. They often conceal their identities or partners for fear of discrimination if these details are disclosed to others in their work environments.

Recommendations

The right to freedom from discrimination

Amend section 21(1)(a) of the Human Rights Act 1993 to explicitly include gender identity, gender expression, and sex characteristics as specific prohibited grounds of discrimination;

Update hate speech provisions to effectively address hate speech based on sexual orientation, gender identity, gender expression, and sex characteristics;

Collect data about crimes motivated by hostility towards people with a diverse SOGIESC, including through research and effective police and justice sector recording processes;

Provide comprehensive resources to employers, educational institutions, government agencies, sports bodies, housing rental agencies, health, aged care, and other service providers outlining how people with a diverse gender identity, gender expression, and sex characteristics are fully protected from discrimination under section 21 of the Human Rights Act 1993;

Ensure that anti-violence strategies, policies, and services developed or funded by government specify and address the experiences and needs of SOGIESC-diverse persons and communities, as identified by them.

The right to information: data collection

Develop and implement, in consultation with SOGIESC-diverse people, a comprehensive plan to collect sexual orientation, gender identity, and sex characteristics data in population and household surveys;

Develop definitions, classifications, data standards, and data collection guidelines reflective of SOGIESC-diverse groups in accordance with this plan.

The right to recognition before the law

Amend the Births, Deaths, Marriages, and Relationships Registration Act to ensure that the process for an individual to update the nominated sex on their birth record is predicated on a rights-based model of self-determination, bodily integrity, and non-discrimination in accordance with New Zealand's international human rights obligations;

Ensure that individuals who amend the sex on their birth certificate can nominate a non-binary gender identity and consult with transgender, non-binary, and other gender diverse individuals, and intersex people, as to what the third option should be;

Remove the intersex sex option suggested by the Select Committee after the Bill's first reading; Include in the definitions clauses a provision that defines "gender identity" along the lines of the definition adopted in Argentina and Malta;

Consider whether New Zealand's legislative framework should provide for the right of official recognition of gender identity;

Enable transgender and intersex refugees and asylum seekers to obtain official documentation reflecting their self-defined gender and name based on a statutory declaration, until they can change these details using processes available to permanent residents. Extend this option to migrants who cannot amend their name and gender marker on official documents in their country of origin.

The right to the highest attainable standard of health

Urgently implement measures to address current disparities experienced by the SOGIESC communities in accessing services throughout the health sector;

Develop practice standards to improve access to health and peer-led service delivery for marginalised SOGIESC-diverse communities, particularly Māori, Pacific peoples, people with disabilities, trans people in detention, and older people;

Provide guidance, training, and resources for all workers in the aged care sector on diversity in sexual orientation, gender identity and expression, and sex characteristics;

Require District Health Boards to ensure trans and non-binary people's access to gender affirming health services available in New Zealand, over their lifespan, based on an informed consent model of healthcare, aligned with evidence-based international standards;

Support the development of guidelines, training and resources for health professionals on an informed consent model of healthcare for trans and non-binary people and provide information and resources for individuals, families and communities about accessing gender affirming services;

End the practice of medical interventions on people with variations of sex characteristics which can be deferred to a later age;

Create clear pathways to access publicly funded reparative surgery and support for people with variations of sex characteristics through each District Health Board.

The right to education

Implement anti-discrimination policies and guidelines for teachers and coaches in all schools that explicitly name sexual orientation, gender identity and expression, and sex characteristics;

Legislate that schools must update names and gender markers on student records by request, before a legal name change;

Provide further guidance from the Ministry of Education to support schools to be inclusive of trans and non-binary students, including by reiterating that school records and databases should reflect a student's chosen name and gender and this does not require changes to name or sex on a birth certificate;

Provide dedicated, ongoing support and professional learning development to teachers and schools regarding SOGIESC diversity;

Standardise health education in the timetable at least two times per week or cycle;

Include sexuality education (12-15 lessons per year minimum); and mental health education, including learning about drugs and alcohol, identity, wellbeing, interpersonal skills, social and political contexts; and access to health care; in health education content;

Ensure all students have access to free and confidential health services at school.

The right to work

Update the 2015 New Zealand standard, Rainbow-inclusive workplaces: A standard for gender and sexual diversity in employment (NZS8200:2015), through consultation with a wide range of people with diverse SOGIESC. Ensure their representation on the Committee reviewing this standard;

Develop, implement, and monitor anti-discrimination workplace policies through community consultation which are inclusive of all people with a diverse sexual orientation, gender identity and expression, and sex characteristics;

Recognise the self-determined gender of staff, customers, and stakeholders irrespective of official identity documents, in line with UN standards;

Support staff, customers, and stakeholders to use the bathroom and uniform of their choice in the workplace;

Provide ongoing workplace training related to diversity in sexual orientation, gender identity and expression, and sex characteristics.

Conclusion

The Commission welcomes action on Prism's recommendations. Improved services, resources, and access is what SOGIESC-diverse people say they need. Treating everyone the same is not the solution, because people are not the same. Systemic change requires systemic intervention to advance the human rights of SOGIESC-diverse people. A free, safe, and just New Zealand values diversity by uplifting, empowering,

and respecting a dignified life for all. Human rights alone cannot reduce inequalities in discrimination, data, legal gender recognition, health, education, and employment; but they have a vital role. Prism reflects light on a path towards the realisation of human rights for those with a diverse sexual orientation, gender identity and expression, and sex characteristics.