



Hon Lianne Dalziel Associate Minister of Justice

## Government Response to Human Rights Commission's Transgender Report

Date	12 March 2008	File reference	HUM-16-02
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Action Sought	Timeframe/Deadline
<p><b>Note</b> the key findings and recommendations of the Human Rights Commission's Transgender Report;</p> <p><b>Direct</b> the Ministry of Justice to coordinate the assessment and implementation of the Transgender Report's recommendations;</p> <p><b>Agree</b> that section 21(1)(a) of the Human Rights Act 1993 does not require amendment to include "gender identity" within the definition of "sex" as a prohibited ground of discrimination;</p> <p><b>Agree</b> that no formal Government response to the Transgender Report is necessary.</p>	As priorities allow.

### Contacts for telephone discussion (if required)

Name	Position	Telephone (work) (a/h)	1st contact
Stuart Beresford	Manager, Bill of Rights/Human Rights (Public Law Group)	[ s 9(2)(a) ]	✓
Nicholai Anderson	Legal Adviser, Bill of Rights/Human Rights (Public Law Group)		

### Minister's office to complete

- Noted       Approved       Overtaken by events  
 Referred to: \_\_\_\_\_  
 Seen       Withdrawn       Not seen by Minister

### Minister's office comments

HUM-16-02

Government Response to Human Rights Commission's Transgender Report

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12 March 2008

Hon Lianne Dalziel Associate Minister of Justice

## **Government Response to Human Rights Commission's Transgender Report**

### **Purpose**

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1. This briefing:
  - summarises the Human Rights Commission's Report of the Inquiry into Discrimination Experienced by Transgender People, "To Be Who I Am";
  - seeks your agreement on the initial Government response to the report's recommendations;
  - attaches a draft letter to the Chief Human Rights Commissioner, Rosslyn Noonan; and
  - attaches draft letters to your Ministerial colleagues.

### **Executive summary**

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2. The Human Rights Commission ("the Commission") released its Report of the Inquiry into Discrimination Experienced by Transgender People in January 2008.
3. The Report highlights a disproportionately high incidence of unlawful discrimination being suffered by transgender people, and highlights four areas for immediate attention:
  - increasing participation of trans people in decisions that affect them;
  - strengthening the legal protections making discrimination against trans people unlawful;
  - improving access to health services, including gender reassignment services; and
  - simplifying requirements for change of sex on a birth certificate, passport, and other documents.
4. The extent of collaboration required to assess and implement the Commission's recommendations requires a degree of oversight and coordination by the Ministry of Justice.
5. Existing protection against discrimination for transgender people under the definition of "sex" in section 21(1)(a) of the Human Rights Act 1993 means that an amendment to include "gender identity" would be largely symbolic. The objectives of such a change could feasibly be achieved through an education and awareness programme.
6. A formal response to the Commission's Report is likely to be publicly divisive and time consuming. As many of the recommendations can be readily addressed, it is proposed that work simply gets underway. More complicated recommendations can be subjected to detailed analysis.

## Background – Transgender Inquiry

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7. The Commission’s Inquiry into the Discrimination Experienced by Transgender People (“the Inquiry”) commenced in 2006, and focused on three areas: experiences of discrimination, access to health services (including but not limited to gender reassignment), and barriers to legal recognition of gender status.
8. Over 18 months, the Inquiry met with a diverse range of people generically identifiable as “trans people” – having in common the struggle to come to terms with who they are, to have others accept them, and to be able to live fulfilled lives in the sex they know themselves to be. The Inquiry also consulted with community groups, health professionals, academics and government agencies, including the Ministry of Justice.

## Key findings

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9. The Report of the Inquiry (“the Report”) was released in January 2008, and made the following key findings:
  - a disproportionately high incidence of unlawful discrimination has been suffered by trans people;
  - the population of affected people is not readily ascertainable;
  - intersecting factors operate to marginalise trans people and their families, compromise their safety, affect their access to housing, create barriers to finding and retaining employment, place restrictions on their participation in public life and jeopardise their navigation of the criminal justice system;
  - the wider community has little or no knowledge about the issues affecting trans people; and
  - the marginalisation of trans people is exacerbated by either the absence of policies and practices that recognise their specific needs, or the development of such policies without their involvement.

## Principal recommendations

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10. The Report makes the following principal recommendations for action by government agencies:

### *All government agencies*

- increase consultation and collaboration with trans people on issues that affect them;
- review policies and practices to ensure these do not discriminate against, and are inclusive of, trans people; and
- consider when it is necessary to gather sex data and, where necessary, ensuring categories for data collection reflect the diversity of trans people.

### *Ministry of Justice*

- amend the Human Rights Act 1993 to secure protection from discrimination on the grounds of ‘gender identity’;
- record information about crimes against trans people including crimes motivated by a victim’s gender identity; and



- investigate options for disclosure of previous names where a Police clearance is needed for a trans person.

*Other specific government departments*

- amend the Births, Deaths, and Marriages Registration Act 1995 (section 28(3)(c)(i)(B)) to ensure trans people are fully recognised, and improve consistency in government policies relating to change of sex details on official documents (Department of Internal Affairs); and
- provide clear information about gender reassignment services available within each district health board, and develop treatment pathways and agreed standards of care (Ministry of Health).

**Actions to date**

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11. Ministry of Justice (“the Ministry”) officials have conducted meetings with affected government agencies to gauge reactions to the recommendations.
12. Several agencies have already taken steps that will address specific recommendations. For example, a draft Supplementary Order Paper (“SOP”) to the Births, Deaths, and Marriages Registration Amendment Bill is due to be considered by the Cabinet Legislation Committee on Thursday, 20 March 2008. This SOP would address a specific recommendation of the Inquiry by ensuring that the Family Court is able to make declarations as to sex for New Zealand citizens born overseas.
13. A number of recommendations, however, can only be achieved through inter-agency collaboration. We, therefore, suggest that the Ministry takes a coordination and oversight role, ensuring that agencies address the recommendations affecting them and bringing agencies together for this purpose.

**Ministry specific recommendations**

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14. The Ministry has also undertaken preliminary analysis of the three Ministry specific recommendations, and, in particular, the recommendation that the Human Rights Act 1993 (“HRA”) be amended to secure protection from discrimination on the grounds of ‘gender identity’.
15. The proposed law change is identical to that put forward in the Human Rights (Gender Identity) Amendment Bill (“the Bill”) in 2006. The Bill was ultimately withdrawn following the Attorney-General obtaining an opinion from the Crown Law Office stating that there was currently no reason to suppose that “sex discrimination” would be construed narrowly to deprive transsexuals of protection under the HRA. The Attorney-General subsequently stated that due to the existing protection, the HRA did not require amendment.
16. The Report notes that there is limited awareness of the Crown Law Office opinion among government agencies, and recommends that the definition of “sex” in section 21(1)(a) of the HRA be amended to specifically include gender identity, “for the avoidance of any doubt”.
17. An amendment to the definition of sex would send a clear signal that discrimination against trans people is not to be tolerated, but its effect is likely to be largely symbolic. The Ministry considers that an education and awareness programme could achieve the same objectives, and does not consider a law change to be necessary at this time.

18. The Ministry considers that the recommendations to record information about crimes against trans people, and investigate options for disclosure of previous names where a Police clearance is needed for a trans person are likely to be achievable without legislative change, and has begun investigating the possibility of administrative reforms.

## Next Steps

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19. Having met with various affected government agencies and the Human Rights Commission, the Ministry recommends that no formal Government response to the report is necessary. A formal response is likely to be publicly divisive and time consuming. While many recommendations are uncontroversial and can be readily achieved, others will require significant analysis and collaboration.
20. The Ministry, therefore, recommends that it take a coordination and oversight role, working with affected government agencies and the Human Rights Commission to ensure that the recommendations are given due weight. If you agree, a round table meeting will be scheduled in the coming weeks.
21. We also recommend that you write to the Chief Human Rights Commissioner, Rosslyn Noonan, commending the work of the Inquiry and advising that the Ministry will coordinate the assessment and implementation of the recommendations. A draft letter is attached for your perusal.
22. Draft letters to your Ministerial colleagues commending the Report and requesting the support of their respective departments are also attached. We note that you may also wish to raise this matter as an oral item in Cabinet, as the Government's response to the Report is likely to generate public interest.

## Recommendations

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23. It is recommended that you:
- 23.1. **Note** the key findings and recommendations of the Human Rights Commission's Transgender Report;
- 23.2. **Direct** the Ministry of Justice to coordinate the assessment and implementation of the Transgender Report's recommendations; **YES / NO**
- 23.3. **Agree** that section 21(1)(a) of the Human Rights Act 1993 does not require amendment to include "gender identity" within the definition of "sex" as a prohibited ground of discrimination; **YES / NO**
- 23.4. **Agree** that no formal Government response to the Transgender Report is necessary; **YES / NO**
- 23.5. **Sign** the attached letter(s) **YES / NO**
- to the Chief Human Rights Commissioner commending the work of the Inquiry;
  - to your Ministerial colleagues requesting the support of their respective departments;

**23.6. Consider** whether to raise this matter as an oral item in Cabinet

Stuart Beresford  
Manager, Bill of Rights/Human Rights  
Public Law

APPROVED / SEEN / NOT AGREED

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Hon Lianne Dalziel  
**Associate Minister of Justice**  
Date:

**Attachments**

Letter to the Chief Human Rights Commissioner, Rosslyn Noonan;

Letters to your Ministerial colleagues.