

UPR Submission from the Aotearoa New Zealand IDAHOBIT Day Coalition

INTRODUCTION

1. New Zealand is yet to receive any UPR recommendations related to human rights issues faced by Rainbow communities. This is despite a comprehensive joint submission in New Zealand's second cycle from the Aotearoa New Zealand Sexual Orientation Gender Identity and Intersex (SOGII) Coalition.¹ In its formal response to the Human Rights Council in June 2014, the New Zealand Government noted this gap and stated:

“The New Zealand Government is aware that some issues raised by the Human Rights Commission and NGOs in their UPR submissions were not reflected in the interactive dialogue and Working Group recommendations, for example issues around legal abortion and the rights relating to sexual orientation, gender identity and intersex people. We intend to follow up on these issues separately as part of our commitment to ongoing engagement with civil society on the UPR.”²

2. However, very few of the SOGII Coalition's recommendations have been advanced since that time. New Zealand's National Plan of Action, on commitments undertaken in response to New Zealand's second Universal Periodic Review, includes none under the category sexual orientation, gender identity and intersex.³

RIGHT TO INFORMATION⁴

Official SOGIESC Statistics

3. The lack of official population data about Rainbow communities remains a contentious issue, including during the latest Census in March 2018 which retained a binary sex question and did not collect gender identity or sexual orientation data. The level of community frustration was acknowledged by the incoming Minister of Statistics, in a letter to Chief Statistician in February 2018. This set out the Minister's expectations that “work to include census questions on, not just biological sex, but also sexual identity and sexual orientation will be a priority for the next national census in 2023”.⁵
4. Subsequently, in April 2018, Statistics New Zealand sought submissions on a sexual identity standard. Community based organisations submitted on the need for their greater participation in strategic discussions about the collection of data about Rainbow populations, rather than piecemeal consultation on individual surveys, standards and classifications. These concerns reflect frustrations with the gender identity standard developed by Statistics New Zealand in 2015, that risks misclassifying and undercounting trans and non-binary people, is not inclusive of intersex people, and is inconsistently used by government agencies⁶. Community concerns about unintended, harmful consequences of proposed changes have been compounded with the July 2018 release of a consultation document on revisions to the National Health Index. This refers to the Statistics New Zealand's imminent

review of the standard for 'biological sex recorded at birth' that "will be considering a third category for people who are intersex".⁷ Such a proposal is not supported by intersex human rights defenders in New Zealand or regionally.⁸

Recommendations

5. We recommend that the New Zealand Government be directed to:
 - Ensure that Statistics New Zealand works with Rainbow community experts to develop a comprehensive, coordinated work plan to inform policy and funding decisions designed to reduce inequalities faced by Rainbow populations, by:
 - creating and updating sex, gender identity, sexual identity, sexual attraction, and sexual behaviour definitions, classifications, and standards;
 - collecting gender identity, sexual orientation, and sex characteristics data across a range of population surveys and administrative data sets, to inform policy and funding decisions designed to reduce inequalities faced by Rainbow populations across their lifespan; and
 - resourcing the participation of Rainbow researchers and community organisations in this work and specifically on working with Statistics New Zealand on guidelines for collection of this data.

RIGHT TO THE HIGHEST ATTAINABLE STANDARD OF HEALTH⁹

Healthcare for Rainbow People

6. Research shows that Rainbow communities, like other minorities, experience persistent underlying stress from being in a hostile environment in which their behaviour, values, appearance, or actions are different from the dominant majority.¹⁰ Discrimination against people because of their sexual orientation, gender identity or expression, or sex characteristics, and stigma (including self-stigma), isolation, and secrecy are likely to cause chronic stress for Rainbow communities. This has negative impacts on health outcomes for Rainbow people, including higher rates of mental health and addiction issues,¹¹ as acknowledged by the current 2018 Government Inquiry into Mental Health and Addiction.¹²
7. Accessing information about the health of our communities is difficult for multiple reasons. Current services seldom collect gender identity data, and there has been insufficient support for standalone research on current practice or to introduce good practice initiatives designed to improve health outcomes for Rainbow communities. The very limited quantitative data available comes from the invaluable Youth 2000 national youth health survey series,¹³ yet there has been a struggle to secure funding for this to continue.
8. In its latest 2012 report, Youth2000 found that same and both sex attracted young people were four times more likely to experience significant depressive symptoms and five times more likely to have attempted suicide in the previous 12 months.¹⁴ Transgender young people were four times more likely (41%) to experience

significant depressive symptoms and five times more likely to have attempted suicide in the previous 12 months.¹⁵

9. A comprehensive June 2018 submission by Rainbow communities to the Government Inquiry into Mental Health and Addictions noted that our communities struggle to access mental health and addiction services. Where services are available, in some cases they are unhelpful or unsafe, due to inadequate staff training, inappropriate policy settings, exclusionary environments or lack of availability of appropriate referral pathways.¹⁶ In June 2018, New Zealand's state-owned television broadcaster aired an exposé demonstrating how surprisingly easy it is to find local health professionals practising gay conversion therapy,¹⁷ despite such therapies being deemed both unethical and harmful by the peak bodies of that sector.¹⁸ Also in June 2018, research on the pre-clinical years of New Zealand's medical schools showed 87% of curriculum modules covered minimal or no Rainbow content even though the content was deemed important by 69% of teachers and participants.¹⁹
10. In 2012, the CEDAW Committee recommended that New Zealand "improve access and quality of health services for lesbian women and transgendered persons".²⁰ Stigma and discrimination in healthcare settings reduce the likelihood that Rainbow communities will seek timely health services or consistently receive adequate care. In 2018, the Ministry of Health noted "Rainbow people need access to healthcare that is accessible, appropriate, and affirms their gender, and sexual identity. A key element of primary care accessibility is making sure that healthcare workforces have the capability to deliver Rainbow-inclusive services"²¹.
11. Youth'12 found that 35% of same sex attracted and both sex attracted youth, and 40% of trans young people had been unable to see a doctor, nurse or other healthcare worker when they wanted or needed that care. This contrasted with 18% of both cisgender and opposite-sex attracted students.

Recommendations

12. We recommend that the New Zealand Government be directed to:
 - Develop practice standards to improve access to, and the competency of, health services delivery for Rainbow communities.
 - Require health providers to demonstrate steps taken to build healthcare professionals' responsiveness to the health needs of Rainbow communities.
 - Ensure the Youth2000 national youth health survey series continues to be conducted by independent academics with a youth development analysis.
 - Direct government health research funding bodies to allocate specific funding for research into the health and well-being needs of those groups within Rainbow communities who face significant health disparities (particularly Māori and Pacific peoples) or have additional health needs (including people with disabilities, gender expansive children and older people).

- Recognise Rainbow communities as a named population in national and regional mental health and addictions policies and strategies.
- Resource Rainbow groups, including those working with young people and whānau/families, for the services they are providing including peer support, suicide support services and supervision.
- Ban conversion therapies and other coercive medical, including surgical, procedures imposed on Rainbow communities because of a person's sexual orientation, gender identity, gender expression, or sex characteristics.

Gender Affirming Healthcare for Trans and Non-binary People

13. The 2008 report of the New Zealand Human Rights Commission's Transgender Inquiry found the vast majority of gender affirming health services were not available within the public health system. Where services did exist, they were *ad hoc* and dependent on a few dedicated health professionals.²² In 2013, the Aotearoa NZ SOGII UPR Coalition highlighted gender-affirming healthcare in its submission to the UN Human Rights Council.²³
14. In April 2014, a petition to the Government's Health Committee urged the Government to take action to address the inadequate supply of publicly funded gender reassignment health services, including counselling, endocrinology and surgical services in New Zealand. A nationwide survey of health specialists confirmed significant gaps in public health services for trans people in many regions and disciplines, including psychological services, access to hormone therapy and surgeries.²⁴
15. The Health Committee's subsequent report acknowledged that a reassessment of public funding for gender reassignment surgery was needed. Both the Labour Party and Green Party, then in Opposition, described "this gulf between supply and need is an appalling failure of the New Zealand health services, highly suggestive of an attitude that is prejudiced and trivialising". They went on to note that "most alarming was the fact that nine District Health Boards said that they provided no services to trans people. It is hard to imagine any other area of health service where this high degree of service variability would be considered acceptable by the Ministry or by the Government."²⁵
16. These longstanding issues were reiterated in the May 2017 IDAHOBIT Day Coalition's report, along with recommendations to improve access to gender affirming care, based on informed consent, and to update guidance and provide training to health professionals delivering such services.
17. Significant increases in demand have exacerbated those issues. A 2018 memo from the Ministry of Health to the incoming Ministers of Health in the new coalition Government noted that "the demand for health services to support people undergoing or considering gender transition is growing significantly but public health service provision has not kept up with demand" and recommended "more consistent access to gender-transition healthcare is needed across the country".²⁶

18. In some parts of the country, District Health Boards have consulted with trans communities about ways to improve access to gender affirming care. However, without systemic responses, including allocated funding, trans people will continue to have limited or no access to gender affirming health services. For example, currently up to four genital reconstruction surgeries every two years are publicly funded, though the Special High Cost Treatment Pool. This allocation was based on 2004 estimations of the demand for such surgeries. In early 2018, the Ministry of Health estimated it would take 50 years to clear the existing waiting list for these surgeries.²⁷ The new coalition Government's first Budget, in May 2018, included no dedicated funding for gender affirming care.²⁸
19. In the absence of any other data on trans people's access to both general and gender affirming healthcare, a community-led survey *Counting Ourselves* was launched on 21 June 2018, with funding from the Health Research Council.²⁹ The *Honour Project Aotearoa* is a long-term research project also funded by the Health Research Council. It is investigating the life experiences of takatāpui (Māori Rainbow communities) to gain insight into understandings of health and wellbeing and investigates issues of access, provision and appropriateness of health care services to this specific Māori community.³⁰

Recommendations

20. We recommend that the New Zealand Government be directed to:
 - 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.
 - Provide sufficient funding to enable timely access to gender affirming surgeries, either through the New Zealand public health system or overseas via its High Cost Treatment Pool funding.
 - 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.
 - Commit to continued dialogue with trans and non-binary communities, expert representatives and other relevant organisations, to initiate upcoming international shifts in practice linked to the World Health Organisation's International Classification of Diseases (ICD 11) and the World Professional Association for Transgender Health's revised Standards of Care (SOC8), due to be released in 2019/20.

RIGHT TO BODILY AND MENTAL INTEGRITY³¹

Intersex People

21. Intersex is an umbrella term describing people born with physical sex characteristics that do not fit medical and social norms for female or male bodies. There are many

different intersex traits, and not all are visible in infancy. Intersex variations might become apparent prenatally, at birth, at puberty, or in adulthood including when a person is trying to conceive. Between 1 and 2 per cent of infants are born with an intersex trait.³²

22. Ethical, medical and human rights concerns have been raised by intersex advocates³³, academics, the New Zealand Human Rights Commission and international human rights and health experts (including many United Nations treaty bodies and Special Rapporteurs, and the World Health Organisation) about medical and surgical practices on intersex infants and children when they are too young to provide informed consent.³⁴ They have called for the end to such procedures, unless they are required for the preservation of life, and the repeal of laws enabling invasive, irreversible medical procedures to modify a person's sex characteristics.³⁵ The repeal of these so-called 'genital normalising' practices is necessary to uphold intersex people's right to bodily and physical integrity, autonomy, and self-determination.
23. To help facilitate the New Zealand government's commitment, the Intersex Trust Aotearoa New Zealand (ITANZ), Tiwhanawhana Trust and the New Zealand Human Rights Commission collaborated to host Intersex Roundtables in April 2016³⁶ and June 2017.³⁷ They brought together multiple stakeholders to address Aotearoa New Zealand's current practice of genital normalisation on intersex children. The most significant progress has been the establishment of a national intersex clinical network through the Paediatric Society of New Zealand. This world-first network will collect accurate population data and produce medical guidelines for ensuring the bodily integrity of intersex children.
24. While this is a significant and important step, it does not address the medical issues faced by intersex adults who tackle comparable barriers as those who are trans or non-binary when trying to access general medical care or surgical support. As the human rights of intersex individuals are increasingly recognised, the pressure increases on largely unfunded intersex advocates such as ITANZ, and other organisations who are allies, that provide support to intersex people and advice to agencies.³⁸

Recommendations

25. We recommend that the New Zealand Government be directed to:
 - Immediately action the recommendations made to New Zealand in 2016 by the UN Committee on the Rights of the Child, including:
 - "(25)(b) Develop and implement a child rights-based health-care protocol for intersex children, setting the procedures and steps to be followed by health teams, ensuring that no one is subjected to unnecessary medical or surgical treatment during infancy or childhood, guaranteeing the rights of

- children to bodily integrity, autonomy and self-determination and provide families with intersex children with adequate counselling and support;
- (25)(c) Promptly investigate incidents of surgical and other medical treatment of intersex children without informed consent and adopt legal provisions to provide redress to victims of such treatment, including adequate compensation;
 - (25)(d) Educate and train medical and psychological professionals on the range of biological and physical sexual diversity and on the consequences of unnecessary surgical and other medical interventions on intersex children;
 - (25)(e) Extend free access to surgical interventions and medical treatment related to their intersex condition to intersex children between the age of 16 and 18.”
- Develop an infrastructure that supports quality and culturally appropriate services, safety, equity of health service provision, and best value of resources to intersex people throughout their lives
 - Continue to resource the newly established Intersex Clinical Network, including to facilitate cross-government discussions, where required
 - Resource intersex organisations, including their development of accessible resources and support for intersex children, adults and their whānau/families within all health and wellbeing services.

RIGHT TO SECURITY OF THE PERSON AND RIGHT TO STATE PROTECTION³⁹

26. Security and safety remain important issues for Rainbow people and community members. The use of violence against people based on their actual or perceived sexual orientation, gender identity or expression, or sex is frequently grounded in misogyny and cultural norms and what it means to be a ‘real’ man or woman.⁴⁰ Those Rainbow people who are more visible to others, including same sex couples, many trans women and gender non-conforming people, are particularly vulnerable to violence in public spaces. Here we focus on the right to safety for young people within schools; intimate partner, sexual and other violence; and the safety of trans people in prisons.

Young People & Schools

27. In its latest 2012 report, the Youth2000 research series found that same sex attracted, both sex attracted, and transgender young people face discrimination and stigma challenges in their environments, including higher rates of bullying and violence.
28. For same and both sex attracted young people: 58% were afraid they would be bullied or hurt; they were three times more likely to be bullied at school at least weekly; and 43% had been hit or harmed by another person.⁴¹ For transgender young people: more than half were afraid that someone at school would hurt or bully them; they were 4.5 times more likely to be bullied at school at least weekly;

and 50% had been hit or harmed by another person.⁴² The research also indicated that same and both sex attracted students are more likely to have been touched in sexual ways or made to do sexual things they didn't want to do (32%) than either female students of all sexualities (26%) or male students of all sexualities (14%). There is nothing published around transgender students' experiences.

29. On a positive note, results suggested that schools play an important role in providing safe and supportive environments, though they require training to do so.⁴³ The Ministry of Education released a 2016 guide for schools on supporting the inclusion and wellbeing of Rainbow students.⁴⁴ However, given the devolved powers granted to schools, implementation is weakened without regularly monitoring by the Education Review Office.
30. New Zealand's main learning resource to help increase understanding and support of diverse genders, sexualities and sex characteristics and the norms that create homophobia, biphobia and transphobia, is the *Inside Out* teaching resource developed by the community organisation RainbowYOUTH.⁴⁵ Another community organisation, InsideOUT, has led work nationally and produced resources on creating diversity groups in school⁴⁶ and making schools safer for trans and gender diverse youth.⁴⁷
31. Ara Taiohi, the peak body for youth development, has indicated the need for greater local and national communication between Rainbow and mainstream youth organisations. This includes the need to include young Rainbow voices in mainstream training and to support the Rainbow support sector to improve their youth work practice.⁴⁸ Ara Taiohi also identified the need for competency training for mainstream services within the wider youth sector.⁴⁹ As noted earlier, youth-led and other Rainbow organisations are having to fill the gaps where government agencies and mainstream services are not addressing these issues.⁵⁰

Recommendations

32. We recommend that the New Zealand Government be directed to:
 - Develop comprehensive anti-bullying policies to address bullying based on someone's sexual orientation, gender identity, gender expression or sex characteristics.
 - Require all schools, including 'special character' schools, to produce policies outlining how they will ensure safe and inclusive environments for Rainbow students with options for gender neutral bathrooms and uniforms.
 - Direct the Education Review Office to require schools to report regularly on their obligations to ensure the safety and wellbeing of Rainbow students
 - Resource initiatives that assist schools to establish Rainbow diversity groups, address bullying, and provide safer environments for Rainbow students.
 - Implement comprehensive sexuality and gender education into all teacher training programmes.

- Resource schools to train teachers and support staff to deliver high quality, comprehensive sexuality and diversity education encompassing sexual orientation, gender identity, gender expression and sex characteristics.

Intimate Partner, Sexual & Other Violence

33. In 2016, the *Hohou Te Rongo Kahukura – Outing Violence* project undertook a major research project on the incidence of intimate partner and sexual violence against Rainbow people.⁵¹ Consistent with the Ara Taiohi research, the project found significant limitations on the ability of mainstream services to respond effectively to Rainbow people experiencing partner or sexual violence. Racism compounded the experiences of violence experienced by Māori, Pacific peoples, Asian and other non-European Rainbow people.
34. While the Youth2000 data series provides comprehensive data on school students, New Zealand does not collect large-scale population data which would allow us to provide comparative statistics for violence against Rainbow people as a whole. The lack of local data constrains us from identifying the full scale of the violence that Rainbow people are experiencing. However, the experience of Rainbow people presenting to Rainbow organisations reiterates the findings of studies overseas, that show lifetime sexual violence experience for trans people may reach 50%, and that trans women of colour are most likely to be victimised.⁵² National surveys in Australia and the United States also indicate that rates of partner violence and sexual violence for Rainbow people are as high or higher than for heterosexual people.⁵³

Recommendations

35. We recommend that the New Zealand Government be directed to:
- Ensure anti-violence strategies, policies and services recognise the specific experiences and needs of Rainbow people and Rainbow communities.
 - Resource Rainbow organisations to train mainstream organisations on how to prevent and respond to Rainbow people’s experiences of partner, sexual and other violence.

RIGHT TO TREATMENT WITH HUMANITY WHILE IN DETENTION⁵⁴

Trans People in Prison

36. Over a quarter of people who completed the 2017 IDAHOBIT online survey identified safety and healthcare issues for trans people in prison as one of their top 5 issues of concerns. While the Department of Corrections’ regulations for placement of transgender and intersex prisoners were revised in 2014⁵⁵, high profile reports of transgender women assaulted in prison raise significant concerns about their implementation in practice.⁵⁶ It was not until 2018 that revised induction policies were incorporated into the Prison Operations Manual.⁵⁷ These do not contain any

information about trans people's access to hormones or other gender affirming health care while in prison.

Recommendation

37. We recommend that the New Zealand Government be directed to:
- Monitor the implementation of the Department of Correction's Transgender Prisoner policy to ensure trans prisoners' right to safety, and access to health services and rehabilitation on an equal basis as others.

RIGHT TO LEGAL RECOGNITION⁵⁸

Legal gender recognition

38. UN treaty monitoring bodies and multiple UN agencies have repeatedly recommended the revision of gender recognition laws to comply with international human rights standards. This has included recommending the removal of "restrictive or abusive" medical requirements and calling for legal gender recognition procedures that are "expeditious, transparent and accessible", inclusive of transgender children, and that have been developed through effective consultation with transgender people and organisations.⁵⁹
39. Since the 2012 Argentinian gender recognition law, countries in Europe such as Malta, Ireland, Denmark, and Norway have introduced laws based on self-determination,⁶⁰ in line with evolving international human rights standards, most recently set out in November 2017 additions to the Yogyakarta Principles.⁶¹ In January 2018, the Inter-American Court of Human Rights issued an advisory opinion asserting that countries should ensure legal gender recognition for both adults and children, based solely on the self-perceived identity of a person.⁶² In June 2018, the Austrian Constitutional Court ordered, with immediate effect, that sex entries in the civil registries and in identity documents have to reflect an individual's self-determined gender identity.⁶³
40. In New Zealand, a petition was presented to the Government Administration Committee in October 2016 calling on the Minister of Internal Affairs to enable intersex, trans and gender diverse adults to change the sex details on any official documentation to male (M), female (F) or indeterminate (X) based solely on the individual's self-identification, without any requirement for medical treatment or the need to resort to a court process.⁶⁴ Such an approach would reflect the requirements for an adult to amend their gender marker on a New Zealand passport⁶⁵ or driver licence.⁶⁶
41. In August 2017, the Government Administration Committee recommended that officials review provisions for adults to amend gender markers, based on self-identification, paying specific attention to the Malta law.⁶⁷ In early 2018, the government sought submissions on this issue as part of a broader review of the Births, Deaths, Marriages and Relationships Registration Bill.⁶⁸ Submissions from

trans and non-binary people and their families, with support from the Human Rights Commission, have strongly argued for a move to self-determination for both adults and children.⁶⁹

42. Submissions also highlighted the vulnerability of non-residents in New Zealand, including asylum seekers, who are unable to amend their name or gender marker in their country of origin or in New Zealand, or to be issued any form of identity verification document confirming their gender identity.⁷⁰ Currently the Family Court can issue a declaration as to sex, recognising a change to a gender marker for permanent residents born overseas. Under the statutory declaration model being debated in New Zealand, this option should be retained for people born overseas and extended to asylum seekers, international students, and other migrants on temporary visas.

Recommendations

43. We recommend that the New Zealand Government be directed to:
- Enable adults and those aged 16 and 17 with intersex variations or who are trans or non-binary to change the sex details on any official documentation to male (M), female (F) or non-binary (X) based solely on a statutory declaration of their self-defined gender identity
 - Enable children and young people under the age of 16 who have intersex variations or who are trans or non-binary to change the gender marker on any official documentation, through a parent or legal guardian completing a statutory declaration on the child's behalf. This declaration should be based on the child's explicit request, taking into account the evolving capacities and best interests of the child.
 - Enable asylum seekers and others on temporary visas to complete a statutory declaration process to verify their self-defined gender identity and name.

RIGHTS TO EQUALITY AND NON-DISCRIMINATION⁷¹

Anti-discrimination protections

44. Gender identity, gender expression and sex characteristics are not prohibited grounds of discrimination under section 21 of the Human Rights Act 1993. Previous Ministers of Justice have argued that gender identity is covered under the ground of sex discrimination.⁷² However, the Human Rights Commission's 2008 Transgender Inquiry report and 2016 Intersex Roundtable report have recommended explicit recognition of gender identity, gender expression, and sex characteristics as specific grounds of prohibited discrimination.⁷³
45. Responses to the 2017 IDAHOBIT report survey found that there continues to be significant community concern that, without such explicit protections, it may be legal to discriminate against trans, non-binary, and intersex people. These concerns have

also been raised and reflected in recent public debates about New Zealand's constitutional arrangements.⁷⁴

Recommendations

46. We recommend that the New Zealand Government be directed to:
- Provide comprehensive resources and training to employers, educational institutions, government agencies and other service providers outlining how transgender, non-binary and intersex people are fully protected from discrimination under section 21 of the Human Rights Act 1993
 - Amend section 21 of the Human Rights Act 1993 to explicitly include gender identity, gender expression and sex characteristics as specific prohibited grounds of discrimination

Rainbow refugees, asylum seekers, and migrants

47. The specific vulnerability of Rainbow refugees, asylum seekers and migrants is heightened because of section 392(3) of the Immigration Act 2009. This provision exempts the Immigration Act 2009, and related immigration regulations and instructions, from the anti-discrimination protections in the Human Rights Act 1993 and the jurisdiction of the Human Rights Commission. In 2010 the Human Rights Committee recommended, in its concluding observations relating to New Zealand's fifth periodic review under the International Covenant on Civil and Political Rights, that the Government should "consider extending the mandate of the New Zealand Human Rights Commission so that it can receive complaints of human rights violations related to immigration laws, policies and practices and report on them".⁷⁵

Recommendation

48. We recommend that the New Zealand Government be directed to:
- Amend section 392 of the Immigration Act 2009, to extend the mandate of the Human Rights Commission so that it can receive complaints of human rights violations related to immigration laws, policies and practices and report on them.

Rainbow people with disabilities

49. Discrimination based on sexual orientation, gender identity, gender expression, or sex characteristics is often compounded by discrimination on other grounds, including disability.⁷⁶ There is little published material on the health and well-being of Rainbow people who have lived experience of a disability or that indicates the levels of violence and harm they endure. The *All of Us* project was the first of its kind in New Zealand that explores the intersections between living with a disability and having diverse sexuality, gender or sex characteristics.⁷⁷ The report confirms the extensive impact on health and well-being, both through harm from others and through lack of accessibility to services or information.

Recommendations

50. We recommend that the New Zealand Government be directed to:
- Ensure that all disability support services include rainbow communities in any disability resources, projects or national strategies and policy.
 - Include Rainbow people with disabilities in all government consultation with Rainbow communities.

RIGHT TO FOUND A FAMILY⁷⁸

Adoption and care of children

51. New Zealand's Adoption Act 1955 has been criticised as out-dated by New Zealand's Human Rights Commission, Law Commission, and Children's Commissioner, with six separate government committees and two Parliamentary committees recommending comprehensive reforms.⁷⁹ While marriage equality in 2013 enabled same-sex couples to marry, and therefore adopt as a couple, some of the many outstanding gaps in the Adoption Act relate specifically to Rainbow communities.
52. These include the lack of provisions enabling adoption by same-sex couples in civil unions or in *de facto* relationships. One member of such same-sex couples may attempt to adopt as an individual, however, there is no process requiring or enabling them to seek their partner's consent. In 2016, these provisions were deemed by the Human Rights Review Tribunal as inconsistent with the right to freedom from discrimination based on both sexual orientation and marital status.⁸⁰

Recommendation

53. We recommend that the New Zealand Government be directed to:
- Reform adoption laws and modernise other laws relating to the care of children to reflect the legitimate diversity of Aotearoa New Zealand family, parenting and care arrangements, including by Rainbow individuals and couples.

ENDNOTES

¹ Aotearoa / New Zealand's SOGII UPR Coalition (2014) Submission to New Zealand's second Universal Periodic Review: https://www.hrc.co.nz/files/7014/2406/3081/SOGII-Coalition_joint-UPRsubmission_New-Zealand_Jan-Feb-2014-with-appendices.doc

² <https://www.hrc.co.nz/files/5314/2406/1357/New-Zealand-Government-Response-to-2014-UPR-recommendations.pdf>

³ New Zealand's National Plan of Action, 'Sexual Orientation, Gender Identity, and Intersex': accessed 12 July 2018: <https://npa.hrc.co.nz/category/44>

⁴ *The Yogyakarta Principles plus 10*, additional state obligations relating to the Right to Information (Principle 19), p. 21. Retrieved from: http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf

⁵ Minister of Statistics, 'Gender and Sexual Orientation Census Priority', media release 11 February 2018

⁶ Pega, F., Reisner, S. L., Sell, R. L., & Veale, J. F. (2017). Transgender health: New Zealand's innovative statistical standard for gender identity. *American Journal of Public Health*, 107(2), 217-221. doi:10.2105/AJPH.2016.303465

⁷ Ministry of Health (2018) *Proposed changes to the National Health Index (NHI) system and HSO 10046, the Consumer Health Identity Standard*, released 9 July 2018. <https://consult.health.govt.nz/hiso/proposed-changes-nhi-hiso10046/consultation/subpage.2018-07-05.3331257831/>

⁸ Darlington Statement (2017) Joint Statement by Australia and Aotearoa/NZ Intersex Community Organisations & Independent Advocates <https://ihra.org.au/darlington-statement/>

⁹ *The Yogyakarta Principles*, Principle 17, p. 22. Retrieved from: http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf

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¹¹ Stevens, M. W. (2013) *Rainbow Health: The Public Health Needs of LGBTTI Communities in Aotearoa New Zealand with Policy Recommendations*. Auckland: Affinity Services

http://www.adhb.govt.nz/documents/Affinity_Services_Rainbow_Health_Report.pdf; Clark, T. C., Lucassen, M. F. G., Bullen, P., Denny, S. J., Fleming, T. M., Robinson, E. M., & Rossen, F. V. (2014) The Health and Well-Being of Transgender High School Students: Results from the New Zealand Adolescent Health Survey (Youth'12). *Journal of Adolescent Health*, (0) 1-7; Birkenhead A. and Rands, D. (2012) *Let's talk about sex . . . (sexuality and gender). Improving mental health and addiction services for Rainbow Communities*. Auckland District Health Board. [Youth 2012] [Youth 2007] Lucassen, M., Merry, S., Robinson, E., Denny, S., Clark, T., Ameratunga, S., Crengle, S., Rossen, F. (2011) Sexual attraction, depression, self-harm, suicidality and help-seeking behaviour in New Zealand secondary school students. *Australian and New Zealand Journal of Psychiatry*. 45(5), 376-383

¹² Establishment of the Government Inquiry into Mental Health and Addiction, 30 January 2018: <https://gazette.govt.nz/notice/id/2018-go318>

¹³ <https://www.fmhs.auckland.ac.nz/en/faculty/adolescent-health-research-group/publications-and-reports.html>

¹⁴ Lucassen, M.F.G., Clark, T. C., Moselen, E., Robinson, E.M., & The Adolescent Health Research Group. (2014). Youth'12 The Health and Wellbeing of Secondary School Students in New Zealand: Results for Young People Attracted to the Same Sex or Both Sexes. Auckland, New Zealand: The University of Auckland.

¹⁵ T.C. Clark, M.F.G. Lucassen, P. Bullen, S.J. Denny, T.M. Fleming, E.M. Robinson and F.V. Rossen (2014) *The Health and Well-Being of Transgender High School Students: Results from the New Zealand Adolescent Health Survey (Youth'12)* in *Journal of Adolescent Health*. Vol 55 (1) [http://www.jahonline.org/article/S1054-139X\(13\)00753-2/abstract](http://www.jahonline.org/article/S1054-139X(13)00753-2/abstract)

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