

**THE RIGHTS OF TRANSGENDER PEOPLE IN
PRISONS**

RESEARCH PAPER PREPARED FOR THE EJP SYMPOSIUM, 11
MAY 2016



The Rights of Transgender People in Prisons

Research Paper Prepared for the Equal Justice Project
Symposium
University of Auckland – 11 May 2016

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1 Introduction

The rights of transgender people in prison are a controversial issue in New Zealand. Amid recent allegations of discrimination and abuse, there is a need to consider the nature of the problem and how we might go about addressing it. This research paper is designed to achieve both of these aims.

It will begin by outlining the scope of legal rights and protections afforded to transgender people in New Zealand. It will then apply these to the prison context, determining the extent to which they are being upheld and shedding light on the difficulties transgender prisoners face. Finally, it will canvas a range of potential solutions. Inspiration will be drawn from approaches taken overseas, while assessing the possibility of replication in New Zealand. It is our intention that this paper will encourage conversation about how we can better protect the rights of transgender prisoners.

2 The Rights of Transgender People in New Zealand

Transgender people are entitled to a range of legal rights and protections in New Zealand. This section will provide an overview of the current legal landscape of transgender rights. It will cover domestic and international legislation as well as the common law.

First, it will look at how the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993 have contributed to laying the foundations upon which transgender rights legislation is based. Next, it will acknowledge the obligations New Zealand has to the international community to uphold certain human rights standards within prisons. Finally, it will examine how New Zealand's current legislation compares to overseas jurisdictions.

2.1 The New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993

The New Zealand Bill of Rights Act 1990 (NZBORA) and the Human Rights Act 1993 (HRA) are the preeminent sources of human rights legislation in New Zealand. When read together, they reveal the underlying principles that lawmaking authorities should contemplate when creating the law on transgender rights in prison.

The purpose of the HRA is "to provide better protection of human rights in New Zealand in general accordance with United Nations Covenants or Conventions on Human Rights."¹ NZBORA states that everyone has the right to freedom from discrimination on the grounds outlined in the HRA.² These include sex and psychiatric illness, but are silent as to gender.³

¹ Human Rights Act 1993, long title.

² New Zealand Bill of Rights Act 1990, s 19(1).

³ Human Rights Act 1993, s 21.

Since there is no statute providing a legal definition of a person's sex, complications arise when considering the application of this ground to transgender people.⁴ A transgender person's legal gender has come to be determined largely on the basis of their sex.⁵ Sex refers to the biological features that a person possesses, while gender is determined by their internal sense of identity.⁶ As such, only transgender people who have had gender affirmation surgery enjoy the right to freedom from discrimination on the basis of sex.

However, all transgender people are arguably entitled to protection from discrimination on the ground of psychiatric illness. This is a broad category that includes conditions and disorders. Under the Diagnostic and Statistical Manual of Mental Disorders, transgender persons are defined as gender dysphoric.⁷ Gender dysphoria refers to the feeling that one's sexual identity does not match one's biological sex. It is often mistaken as an illness, but is gradually being accepted as a mental 'condition' by the international and legal communities.⁸ As the Manual explicitly recognises gender dysphoria as a disorder in New Zealand, transgender people have the right to freedom from discrimination on this ground.

2.2 New Zealand's Obligations Under International Law

New Zealand is signatory to many international attempts to protect human rights. We have obligations relevant to transgender prisoners under the International Covenant on Civil and Political Rights (ICCPR) and the United Nations' Standard Minimum Rules for the Treatment of Prisoners.

These agreements are non-binding, meaning that New Zealand is under no legal obligation to uphold them. However, they hold special significance because they set an unofficial precedent that New Zealand should follow and respect when creating legislation. Our government departments have a political obligation to meet international standards.

Under the ICCPR, "all persons are equal before the law and are entitled without any discrimination to the equal protection of the law."⁹ Likewise, the United Nations' Standard Minimum Rules for the Treatment of Prisoners states that prisons "should seek to minimise any differences between prison life and life at liberty which tend to lessen [...] the respect due to [prisoners'] dignity as human beings."¹⁰ The United Nations also recognises that all "[p]risoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation," which arguably includes hormone

⁴ Human Rights Commission "To Be Who I Am: Report of the Inquiry into Discrimination Experienced by Transgender People" (Human Rights Commission, 15 January 2008) at 92.

⁵ Ibid.

⁶ Rainbow Youth "Educating for Diversity: An Informative Evaluation of the Rainbow Youth Sexuality and Gender Diversity Workshops" (Rainbow Youth, 2013) at 5–6.

⁷ Human Rights Commission, above n 4, at 92.

⁸ American Psychiatric Association *Diagnostic and Statistical Manual of Mental Disorders* (5th ed, American Psychiatric Association, Arlington, 2013).

⁹ International Covenant on Civil and Political Rights 999 UNTS 171 (opened for signature 16 December 1966, entered into force 23 March 1976), art 26.

¹⁰ *Standard Minimum Rules for the Treatment of Prisoners* A/CONF/611 (1955), art 31.

treatment and gender affirmation surgery¹¹ Such international standards are codified in New Zealand as objectives of the Corrections Act 2004.¹²

2.3 New Zealand's Domestic Legislation

The foundations of prison law in New Zealand are the Prison Operations Manual 2016 and the Corrections Regulations 2005. These outline the general rules surrounding the management of transgender prisoners.

The Manual states that transgender prisoners should be placed in an environment that acknowledges and accepts their gender identification whilst ensuring it does not disadvantage or restrict their reintegration into society in any way.¹³ Under the Corrections Regulations, it is only when the Chief Executive is satisfied that a prisoner has completed gender affirmation surgery that they may be moved to accommodation that accords with their gender identity.¹⁴

2.4 The Common Law

The common law refers to law made by the courts. Judicial decisions are important because they contain legal precedents that bind lower courts deciding similar cases. The benchmark for cases concerning the rights of prisoners is *Taunoa v Attorney-General*.¹⁵

In that case, a group of prisoners brought an action challenging the lawfulness of the Behaviour Modification and Behaviour Management Regime (BMR).¹⁶ This was a tool used to manage 'difficult' inmates through measures that included a segregation system. The applicants claimed that the segregation system constituted torture and was correspondingly unlawful under the Penal Institutions Regulations 2000 and NZBORA.

The High Court found that segregation for purposes not related to penalties for misbehaviour meant that prisoners were "not treated with the humanity and with respect to the inherent dignity that they were entitled to as human beings."¹⁷ The Court pointed out that while prisoners "may not have been treated deliberately cruelly," the treatment "fell well below standards that befit a human being including one who is in prison."¹⁸ They concluded that, "unlawful and difficult behaviour by prisoners can never justify unlawful conduct by their jailers."¹⁹ This sets a high standard of rights protection for all prisoners, including those who are transgender.

¹¹ *Basic Principles for the Treatment of Prisoners* GA Res 45/111, A/RES/45/111, art 9.

¹² Corrections Act 2004, s 5(b).

¹³ Department of Corrections *Prison Operations Manual* 2016.

¹⁴ Corrections Regulations 2005, reg 190.

¹⁵ *Taunoa v Attorney-General* (2004) 7 HRNZ 379 (HC).

¹⁶ At [1].

¹⁷ At [277].

¹⁸ *Ibid.*

¹⁹ *Ibid.*

2.5 Foreign Case Law and Legislation

The legal rights and protections available to transgender people in New Zealand both reflect and diverge from overseas trends. How we compare with the United Kingdom, Australia and the United States will be explored below.

2.5.1 United Kingdom

The United Kingdom National Offender Management Service Agency Board has a series of Prison Service Instructions for the management and care of transgender prisoners.²⁰ These ensure that correctional establishments comply with the Equality Act 2010, which includes provisions protecting prisoners from discrimination on the basis of gender.²¹

Correctional establishments are required to permit prisoners who consider themselves transgender, and who wish to begin transitioning, to live permanently in accordance with their gender identity.²² Gender dysphoric applicants must receive the same quality of healthcare they would expect to receive from the National Health Service if they were not imprisoned.²³ In determining the appropriate place for inmates with regards to gender classification, the authorities are required to consider whether inmates have a gender recognition certificate issued under the Gender Recognition Act 2004.²⁴

This is largely similar to the New Zealand approach. However, one key point of difference is that the New Zealand Corrections system does not cater for transgender prisoners wanting to start medical treatment such as hormone therapy while imprisoned.²⁵

2.5.2 Australia

Australia takes a more social-based approach to transgender prisoners than New Zealand. The Australian law tends to view gender on the basis of self-identification as opposed to biological sex. Unlike New Zealand, applications to start hormonal treatment or undertake gender affirmation surgery while in prison can be made at any time.²⁶ Hormonal therapy for transgender prisoners is both provided for and funded by the state.²⁷

²⁰ National Offender Management Service Agency Board *Prison Service Instructions: The Care and Management of Transsexual Prisoners* 2011 (UK).

²¹ Equality Act 2010 (UK), s 149(1).

²² National Offender Management Service Agency Board, above n 20, r 3.2.

²³ National Offender Management Service Agency Board, above n 20, r 2.2.

²⁴ Gender Recognition Act 2004 (UK), ss 1–4.

²⁵ Department of Corrections, above n 13, r M.05.02(h).

²⁶ Corrective Services New South Wales *Operations Procedures Manual* 2016 (Australia), r 7.23.1.2.

²⁷ *Ibid.*

2.5.3 United States of America

The position taken in the United States of America deviates somewhat from New Zealand. When determining where to house a transgender prisoner, the focus is on weighing safety concerns at the federal level.²⁸ In *Crosby v Reynolds*, the Federal District Court of Maine held that housing a pre-operative transgender woman with cisgender female prisoners did not violate the cisgender prisoners' constitutional right to privacy.²⁹ A cisgender person is one whose gender identity matches their biological sex.³⁰ Judges have to weigh the risk of physical and psychological harm to the transgender prisoner against any potential physical risk posed to the cisgender prisoners.³¹

Prisons must also allow transgender inmates who began hormone treatment before incarceration to continue with this process. In *Doe v State of Minnesota Department of Public Welfare*, the Supreme Court of Minnesota held that state policy totally excluding gender affirmation surgery from medical assistance payments was void.³² The Court stated that medical assistance benefits could not be denied merely on the basis that the recipients were transgender and, further, that such a denial would be "arbitrary and unreasonable."³³

3 Are the Rights of Transgender People Upheld in New Zealand Prisons?

This section will consider whether the above rights and protections are being upheld in our prisons. It will provide an overview of the current system of managing transgender prisoners before outlining the range of issues that they face.

3.1 The Current Prison System

Under the current prison system, the Department of Corrections (DoC) conceptualises gender on a largely biological basis. Their Prison Service Manual stipulates that if a member of staff has doubts about an inmate's gender, they must inform the Custodial Systems Manager, who will make an initial determination of their prison placement.³⁴ The sex on a prisoner's birth certificate is supposed to guide staff in determining how to appropriately house them.³⁵

²⁸ Jerry Dasti "Advocating a Broader Understanding of the Necessity of Sex-Reassignment Surgery Under Medicaid" (2002) 77 NYU L Rev 1739 at 1754; Murray Scheel and Claire Eustace *Model Protocols on the Treatment of Transgender Persons by San Francisco County Jail* (National Lawyers Guild and City & County of San Francisco Human Rights Commission, July 2002) at 12.

²⁹ *Crosby v Reynolds* 763 F Supp 666 (D ME 1991).

³⁰ Rainbow Youth, above n 6, at 5.

³¹ At 677.

³² *Doe v State of Minnesota Department of Public Welfare* 257 NW 2d 816 (D Minn 1977) at 816.

³³ At 820.

³⁴ Department of Corrections, above n 13, r M.03.05.01.

³⁵ *Ibid.*

If a transgender prisoner is still housed with a gender they do not identify with, they may apply for review of the initial determination.³⁶ Some transgender prisoners are not able to transfer if they are serving a sentence for a serious sexual offence.³⁷ Transgender prisoners may also opt to be placed in protective segregation if they feel their safety would be compromised in the mainstream prison population.³⁸

3.2 Issues Faced by Transgender Prisoners

Although there is only a small amount of statistical information on the extent of the difficulties faced by transgender prisoners in New Zealand, a number of general insights may be made.

First, transgender prisoners struggle to have their identities recognised because there are practical, legal, and administrative costs to getting birth certificates changed. In order for a transgender person to have the sex on their birth certificate changed, they must be undergoing medical treatment that matches their gender and provide expert medical evidence declaring their gender identity.³⁹ Many transgender people who face incarceration are from lower socioeconomic backgrounds, which can compromise their ability to go through this process.⁴⁰

As a result, transgender prisoners are often housed in prisons that do not accord with their gender identity. In particular, those who are convicted of serious offences are permanently accommodated in prisons that do not match their gender.

Transgender people also appear to face higher risks of violence and sexual assault in prison compared to cisgender inmates. In October 2015, a transgender woman was repeatedly raped overnight while in a cell with a male inmate at a privately run prison in South Auckland.⁴¹ The DoC were aware that she was taking hormone pills as part of her transition, yet took her out of protective segregation and did not transfer her to a women's facility.⁴²

³⁶ Department of Corrections, above n 13, r M.03.05.02.

³⁷ Department of Corrections, above n 13, r M.03.05.02(1).

³⁸ Department of Corrections, above n 13.

³⁹ Department of Internal Affairs "General Information Regarding Declarations of Family Court as to Sex to be Shown on Birth Certificates" (2015) *The Department of Internal Affairs* <https://www.dia.govt.nz/diawebsite.nsf/wpg_URL/Services-Births-Deaths-and-Marriages-Information-for-Transgender-Applicants?OpenDocument>.

⁴⁰ Natasha Frost "Are Trans Inmates Safe in Prison?" (23 October 2015) *Radio New Zealand* <<http://www.radionz.co.nz/news/national/287712/are-trans-inmates-safe-in-prison>>.

⁴¹ Russell Blackstock "Jail Attack Inmate Transgender" *The New Zealand Herald* (online ed, Auckland, 3 October 2015).

⁴² *Ibid.*

In a similar case in April 2016, a transgender woman alleged that a guard raped her, and that prison staff had failed to investigate her previous claims of sexual assaults.⁴³ The DoC confirmed that they knew the inmate was a woman, and held that her allegation had no substance.⁴⁴

International case studies further illustrate this point. A study of violence in Californian correctional facilities showed that transgender inmates were thirteen times more likely to experience violence than cisgender inmates.⁴⁵ 59% of transgender respondents reported being sexually assaulted while incarcerated.⁴⁶ 50% reported having been raped in prison, which contrasts heavily with a figure of less than 1% for the entire Californian prison population.⁴⁷

Trans-misogynistic sentiments also seem ingrained within prison culture. One transgender woman recently revealed that some DoC officers refused to acknowledge her as a female or use her female name.⁴⁸ She was improperly housed in a men's prison until a hunger strike by a transgender rights activist group, No Pride in Prisons, prompted the DoC to transfer her to a women's prison.⁴⁹

The use of voluntary segregation as a protective mechanism can also have negative effects on the mental wellbeing of transgender prisoners. Protective segregation can isolate transgender prisoners by denying them access to social interaction and rehabilitation programmes.⁵⁰ This can make it more difficult to gain parole and can lead to long-term psychological damage.⁵¹

Moreover, the policy decision to rely on segregation also appears to consciously disregard the High Court's remark in *Taunoa* that segregating prisoners for reasons not related to penalties for misbehaviour is inhumane.⁵² Segregation may be viewed as a temporary solution that does not address the wider issue of trans-misogynistic culture and violence in

⁴³ Philip McSweeney "Transgender Woman Alleged Rape in Male Prison" *The New Zealand Herald* (online ed, Auckland, 22 April 2016).

⁴⁴ *Ibid.*

⁴⁵ Valerie Jenness, Cheryl L. Maxson, Kristy N. Matsuda and Jennifer Macy Sumner *Violence in California Correctional Facilities: An Empirical Examination of Sexual Assault* (University of California, 27 April 2007) at 27.

⁴⁶ *Ibid.*

⁴⁷ Jenness, Maxson, Matsuda and Sumner, above n 42, at 28.

⁴⁸ John Weekes "Jailed Transgender Woman Felt More Supported by Inmates than the Public" *The New Zealand Herald* (online ed, Auckland, 4 June 2015).

⁴⁹ "Transgender Prisoner Moved to Women's Jail" *The New Zealand Herald* (online ed, Auckland, 27 August 2015).

⁵⁰ "Government 'Not Keeping Prisoners Safe'" (Podcast, 20 December 2012) Radio New Zealand <<http://www.radionz.co.nz/national/programmes/morningreport/audio/2542093/government-not-keeping-prisoners-safe>>.

⁵¹ Patrick DePoy "Ending Solitary Confinement - The Dangers of Isolation for LGBTI Prisoners and Detainees" (27 June 2012) American Civil Liberties Union <<https://www.aclu.org/blog/ending-solitary-confinement-dangers-isolation-lgbti-prisoners-and-detainees>>.

⁵² *Taunoa*, above n 15, at [277].

prisons. Isolation and the avoidance of formulating effective policy to protect transgender prisoners appear to be exercised instead of addressing the perpetrators of violence.

4 How might the Rights of Transgender Prisoners Be Better Protected?

This section will examine how the rights of transgender people might be better protected in prisons. It will trace different approaches taken by overseas jurisdictions before considering their applicability to New Zealand.

4.1 Overseas Approaches

Many countries around the world have taken steps towards improving transgender rights in prisons. Some solutions include introducing LGBTI inmate policies, building new prisons specifically for transgender inmates, and providing necessary medical treatments. Each of these will be detailed in turn.

4.1.1 LGBTI Inmate Policies

One way of protecting transgender rights in prison is through adopting LGBTI inmate policies that change gender classification in prison. Such a policy was adopted in Harris County, Texas, in 2013.⁵³ The new policy is an extensive one that prohibits any type of discrimination based on sexual orientation and gender identity. It introduced changes in the prison system, such as the requirement for prison staff to undergo training to be equipped with knowledge on how to manage LGBTI inmates.

Because of this policy, transgender prisoners are now allowed to choose where they would like to be housed based on their preferences, not their biological sex. They must also be addressed by their chosen name even if it is not stated on official documents. Harris County's policy contrasts the current New Zealand approach in which transgender people are housed based on whether they have had gender affirmation surgery.

While this policy has been mostly successful, it does have limitations. It was implemented by a local council and affected only local prisons. The adjacent county did not change their policy, suggesting that it may not have an influential domino effect on other districts.

Furthermore, a recent change in local office gave rise to a new sheriff in Harris County, who reversed some aspects of the pro-LGBTI policies implemented by the previous sheriff.⁵⁴ The new sheriff removed the role of liaisons that were supposed to serve as a bridge between the LGBTI community and the local office. The political change may prove to have adverse effects on transgender rights as they had come to be recognised.

⁵³ Ramit Plushnick-Masti "Harris County Jail Starts Sweeping New Policy on LGBT Inmates" *Star-Telegram* (online ed, Texas, 14 November 2013).

⁵⁴ Nicole Hensley "Houston, We Have a Problem: New Sheriff of Harris County, Tex., Wastes Little Time Reversing Predecessor's Pro-LGBT Policies" *New York Daily News* (online ed, New York, 17 June 2015).

4.1.2 Transgender Prisons

A second way of improving safety for transgender prisoners is building prisons specifically for transgender people. In 2010, Italy converted an empty prison to a new facility to house transgender inmates.⁵⁵ The purpose behind creating a specialised facility was to support the needs of transgender prisoners. The prison is well-equipped with guards who are trained on how to treat transgender prisoners, and inmates are provided with psychological support. The prison has capacity to house 30 people. The change was welcomed by many LGBTI advocates who applauded the increased levels of safety and social interaction experienced by transgender inmates.⁵⁶

However, some critics argue that creating a separate prison, whilst providing a safe space for transgender prisoners, segregates cisgender people and transgender people. This compromises the overarching aim of fostering a safe and inclusive prison environment for all people of all genders. Segregating transgender inmates can be seen as a short-term solution for a long-term problem.⁵⁷ A difficult balance needs to be struck between safety and inclusion.

Another argument against creating separate transgender prisons is the availability of resources. The prison in Italy was converted from an existing prison and no extra resources were utilised. Some countries may not have the means to create new prisons specifically for transgender people.⁵⁸ Generally, transgender prisoners make up the minority of prisoners.⁵⁹ In the US, about 0.73% of the national inmate population are transgender.⁶⁰ Due to this small minority, most prison bureaus might prefer to utilise their resources to house inmates in general, rather than specifically transgender prisoners. This is particularly so given the current issues surrounding prison overcrowding. Hence, building a specific facility just for transgender inmates may not be feasible due to resource constraints.

4.1.3 Making Medical Treatment Available to All Transgender Inmates

A final tool for affirming transgender rights in prison is making medical treatments available to all transgender prisoners. This affirms their right to receive healthcare. In the United

⁵⁵ "Italy 'To Open First Prison for Transgender Inmates'" *BBC News* (online ed, United Kingdom, 22 January 2010).

⁵⁶ Nick Squires "Italy Opens First Prison for Transsexuals" *The Telegraph* (online ed, United Kingdom, 28 January 2010).

⁵⁷ Carrie Nelson "Italy's Transgender Prison: Safety or Segregation?" (19 January 2010) *Gender Across Borders* <www.genderacrossborders.com>.

⁵⁸ "Highest to Lowest - Occupancy Level (Based on Official Capacity)" *Institute for Criminal Policy Research* <www.prisonstudies.org>.

⁵⁹ "Prison Statistics" (24 March 2016) *Federal Bureau of Prisons* <www.bop.gov>.

⁶⁰ "Federal Survey: 40% of Transgender Prisoners Are Sexually Abused Each Year" *Advancing Transgender Equality* <<https://transgenderequality.wordpress.com>> at line 3.

States, Texas recently allowed all transgender inmates to receive hormonal therapy, regardless of whether they were receiving treatment before they were incarcerated.⁶¹

California took this a step further and recently introduced a new policy to pay for gender affirmation surgery for transgender inmates.⁶² This policy was applied across all state prisons in California. Transgender inmates have to undergo a screening process before being eligible for the state-funded surgery, which has several requirements. Only inmates who have more than two years left to serve before parole, have lived as a member of that gender with hormone therapy for a year, and have been diagnosed with gender dysphoria, may be granted surgery.⁶³ Both policies provide transgender offenders with better access to necessary healthcare.

While these changes have been met with great praise, the new policies have also been criticised as too rigorous to make a tangible difference for transgender prisoners.⁶⁴ Although they ostensibly guarantee a right to healthcare, the stringent nature of the screening process may undercut accessibility. The requirements may be too tough for some transgender prisoners to secure basic hormonal treatment, let alone gender affirmation surgery. Budget restraints might further inhibit access. Hormonal therapy costs an average of US\$3000 per inmate per year, which the state budget may not cover for all transgender prisoners in California.⁶⁵

4.2 Possible Steps Forward for New Zealand

The above approaches demonstrate that countries all over the world are taking steps to tackle the issues faced by transgender prisoners. New Zealand could take lessons from these overseas jurisdictions. The potential steps that could be taken will be canvassed below.

4.2.1 Self-Identification

A distinctive feature of the current framework in New Zealand is the reliance on biological sex classifications in determining where to house transgender prisoners. New Zealand could change this situation by implementing a self-identification system. This would allow transgender prisoners to choose the gender they identify with and where they would prefer to be housed during the period of imprisonment.

⁶¹ "Transgender Texas Prison Inmates Can Start Hormone Therapy" *NBC News* (online ed, United States of America, 5 February 2016).

⁶² Maureen Cavanaugh, Peggy Pico and Neiko Will "Transgender in Prison: How California's New Guidelines Will Be Implemented" *KPBS* (online ed, United States of America, 26 October 2015).

⁶³ Richard Perez-Pina "California Is First State to Adopt Sex Reassignment Surgery Policy for Prisoners" *The New York Times* (online ed, New York, 21 October 2015).

⁶⁴ Carimah Townes "Texas Prisons Expand Hormone Therapy Treatment To More Transgender Inmates" (8 February 2016) *Think Progress* <<http://thinkprogress.org/>>.

⁶⁵ The Editorial Board "California Prisons Take Lead on Transgender Rights" *The Sacramento Bee* (online ed, Sacramento, 5 November 2015).

The non-profit organisation Agender New Zealand (Agender NZ) believes that both post and pre-operative transgender prisoners should have their choice of placement in an establishment catering for the gender they identify with.⁶⁶ Implementing a self-identified gender classification would allow recognition of an individual's right to define their own gender without their identification needing to be legitimated by gender affirmation surgery. This could reduce the risk of transgender people being housed in prisons that do not accord with their gender identity.

4.2.2 Education and Training of Staff

New Zealand may also confront these issues by training prison staff to be more aware of the unique challenges transgender inmates face. As Agender NZ has identified, "education is not simply a matter of teaching staff what the rules are, but giving them sensitivity to issues facing transgender people, and ensuring that they treat transgender prisoners with dignity and respect."⁶⁷ Training and education would arguably be the most beneficial if it took place throughout the levels of the prison service, as well as the criminal justice system as a whole.

Another policy that could be introduced is a requirement for staff to address transgender inmates by their chosen name and use appropriate pronouns. This would demonstrate greater respect and acceptance of their gender identities.

4.2.3 Transgender Prisons

Separate institutions for transgender prisoners could alternatively be constructed. These could offer a safer environment and ensure better protection of transgender rights. Agender NZ states that, "serious consideration should be given to setting up a special unit catering to transgender people."⁶⁸ This would take into account the different issues transgender people face while in custody and allow for treatment that specifically caters to their needs.

4.2.4 Creation of Transgender Committees

A final option is the establishment of transgender committees to advocate for the rights of transgender people in prisons. These could be an effective way to deal with their concerns. The committee could comprise of a range of different persons, including a transgender legal advocate, a professional who specialises in transgender health issues, a prison medical staff member, a prison security official and a prison mental health official.

⁶⁶ Agender New Zealand "Prisons" (21 October 2012) Agender New Zealand <<http://www.agender.org.nz/186101/87501.html>>.

⁶⁷ Ibid.

⁶⁸ Ibid.

Agender NZ also advocates for “a secure and unbiased complaints procedure which is not subject to interference by rank and file prison staff.”⁶⁹ This could take the form of a sealed box in which transgender prisoners could post a complaint or request to be dealt with by the committee or another independent body.

The implementation of a committee and a specific complaints process could help create more transparency within the system, and a way to hold officials accountable if specific needs of transgender prisoners were not being fulfilled. In a report entitled *To Be Who I Am*, the Human Rights Commission recognised that “policies and practices that impact on trans people’s lives have been developed without sufficient information or consultation with trans people themselves.”⁷⁰ The introduction of a committee and a complaints process for transgender prisoners could therefore also help aid consultation and co-operation.

5 Conclusion

Transgender people face a number of issues under the current prison system. Despite being guaranteed some rights and protections by the law, these are often ignored or infringed in the prison context. However, this research paper has attempted to demonstrate ways in which New Zealand might begin to address these issues. Overseas jurisdictions have introduced a range of measures aimed at better protecting the rights of transgender prisoners. Many of these could be trialled, implemented and evaluated in New Zealand. While some may better represent long-term goals rather than immediate possibilities, all are worthy of discussion. It is only in talking about the problem that we can start breaking down the barriers towards changing it.

⁶⁹ Ibid.

⁷⁰ Human Rights Commission, above n 4, at 47.