Notes of meeting to discuss implications of proposals for transgender people
Human Rights Commission, Auckland
19 September 2012

Attendees

Dr John Angus (Chair, ACART)

Associate Professor Andrew Shelling (Deputy Chair, ACART)

Jack Byrne

George Parker

Joey Macdonald

Leilani Thompson-Rikys

Julie Watson

In attendance

Betty-Ann Kelly (ACART Secretariat)

The points below reflect comments by one or more attendees, and do not reflect formal agreement by the meeting as a whole.

John Angus opened the meeting by thanking Jack Byrne for organising the meeting. John gave a brief overview of New Zealand's regulatory framework for assisted reproduction and ACART's role within this. He also explained the background to the work to review eligibility criteria in the *Guidelines on Surrogacy Arrangements involving Providers of Fertility Services* and the *Guidelines on Donation of Eggs or Sperm between Certain Family Members.*

Attendees noted:

There are definitional problems in the proposed guidelines

- What is meant by "man" and "woman" for the purposes of the guidelines?
- What do the guidelines mean for someone who identifies as a man but who has a womb?
- The guidelines need to enable people to self-identify.

The proposed guidelines assume that if someone has a womb and wants to become a parent, the person should carry a pregnancy

- The proposed eligibility criteria appear to mean that if both people in a partnership have wombs, both would have to meet the eligibility criteria, regardless of their self-identification. The proposals assume that if someone has a womb and wants to become a parent, the individual should make the womb available.
- In many female couples, only one of the women sees herself as intending to carry a pregnancy in order to have a child: for that woman, the intention is an important part of her gender identity. But for the other woman, a potential pregnancy may not be part of her gender identity and may not be in her best interests.
- The eligibility criteria should focus only on the person who intended to become pregnant.
- If a person is known as a man, but is transitioning from being a woman and still has a womb, it could be highly risky for him to carry a child. Risks include the clinical impacts of hormone treatment on the reproductive system (e.g. atrophy of the womb), and adverse social reactions.
- Surrogacy arrangements for "convenience" are at the undesirable end of the spectrum of reasons for using surrogacy in order to become a parent. But along the spectrum is a diverse range of situations where a surrogacy arrangement may be justified.
- The boundaries of "medical need" are not clear.

There is a lack of understanding in the health sector about the needs of people in the trans community

- An ongoing problem for the trans community is the lack of understanding in the medical profession. This can mean that people constantly need to explain themselves and be placed in the position of having to advocate and educate in order to receive health services.
- Some trans people, in order to transition, undergo medical treatment which impairs their fertility. The Human Rights Commission's Transgender Inquiry received submissions from trans people who faced resistance when asking about options to store their eggs or sperm before undergoing hormone treatment or gender reassignment surgery. There appears to be an assumption that "everything changes" – that if an individual is transitioning, this should include relinquishing the opportunity to have a child created from their own eggs or sperm.
- The policy needs to remove the barriers to access, and ensure people are not subjected to intrusive investigation.

- The need to demonstrate that a surrogacy arrangement is justified could be seen as similar to the need to demonstrate that an abortion is justified – this has not been a successful model for women.

The trans community is diverse

- Publicity about Thomas Beattie (a trans man who has had children) has led to assumptions that all trans men who retain a womb would be willing to carry a pregnancy. However, the trans community is diverse. Individuals vary in terms of their gender identity, level of comfort with their original body, medical steps they have undertaken to transition, and their reproductive options and choices. For these reasons the most appropriate policy option may be to clearly signal trans-inclusion within a flexible model that is able to respond to individual circumstances.
- People vary in how they describe themselves and have the right to self-identify. Guidelines typically use an umbrella term (such as "trans") or description (such as "gender diversity"). In doing so, it is helpful to give examples of the breadth of identities encompassed by those terms and to clarify this is not an exhaustive list.

People need to see themselves in policy

- It is important for the trans community to see themselves and be seen in policy, through wording that makes it explicit that they are included.
- The guidelines could include a statement that affirms equity of access for gender diverse people and also include specific provisions that address gender diversity. The signal is very important.
- The guidelines could include an explanation of how the provisions are to be understood and implemented, to ensure that clinics and the ethics committee recognise the policy intent.
- Including specific references to gender diversity would be an important signal to the wider health sector.
- Perhaps the wording could refer to "a woman and an eligible woman", or simply refer to a partner.

ACART was given copies of *To Be Who I Am,* the report of the Inquiry into Discrimination Experienced by Transgender People (Human Rights Commission 2008). The right to health was one of the three core issues covered by the Inquiry's terms of reference.