

13 August 2024

Health and Disability Commissioner

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Health and Disability Commissioner Act 1994 (the Act) and the Code of Health and Disability Services Consumers' Rights (the Code).

Submission of [REDACTED]

Thank you for the opportunity to make a submission.

We would like to address the HDC's proposal to use "gender-inclusive" language in an updated Code, and the assumptions on which the proposal apparently rests as found, for example, in question 1.1:

d. Ensure gender-inclusive language

Currently, the Code uses the language 'him or her' to describe people in the Code. We propose changes to update the language in the Code to be gender-inclusive, making it more accessible to all people.

It is our view that is appropriate to use gender-neutral terms when the sex of the consumer is not relevant. For example, "the consumer" could in most cases replace the terms "he/she" in the Code. We are concerned with the Review's suggestion that the removal of the terms "he/she" is in fact "gender-inclusive", particularly when replaced by the singular "their", and the view that gender inclusive language makes the Code more accessible to all people. Such reasoning has become a feature in many public sector institutions, through the back door via lobby groups who have the ear of these institutions, and this becomes a way of embedding gender ideology into the law with no legislative mandate, or assessment of groups that could be affected.

We would like to counter the HDC's apparent acceptance of the need to desex language as progressive and inclusive of all. There is evidence that women in particular find the imposition of gender in preference to sex as dehumanizing. In recent market research, African Americans expressed reduced trust in health care providers who adopted so-called gender-neutral terms. Another published study of 16 low-income African American women found they experienced confusion or distress when gender neutral terminology was used. Google ngrams and other sources point to the removal of sexed terms as originating from a form of cultural imperialism, rather than a natural progression of language. Given the HDC's origins from the Cartwright Inquiry and the ongoing issues that have affected women as a sex class since, including most recently the vaginal mesh claims, we ask that the HDC carefully consider the effects of these proposed changes to the Code.

Key points

- In health care there are clinically significant reasons why it is important to know a person's sex and use sex-based language. This includes, but is not limited to, health screening and diagnostic testing.

- Medical errors are a leading cause of preventable patient harms. The debates around the difference between sex and gender identity brings a new safety issue to healthcare because the definitions of biological sex and gender expression are being conflated.
- Confusing templates with unclear or inconsistent terminology, are an expression of more profound sex and gender related problems in health care now plaguing health care systems overseas.
- Electronic health records may state a person's "gender identity" (there is also a need to recognise and respect that the majority of people do not claim a GI) and sex markers must also be there in the interests of patient safety and wellbeing.
- In some situations where sex-based language is not necessary the words patient or consumer could be used, which are acceptable terms for all.
- The HDC could take some leadership in this area and indicate clearly how important sex-based language in health is to patient safety given the potential of the loss of sex-based language in health to increase patient harms.
- There is a need to consider how desexed language might in fact reduce inclusivity, increase confusion, dehumanise, or alienate a large segment of the population.