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**TRANSFORMING WOMEN-ONLY SPACES: LAW,  
POLICIES AND REALITIES OF TRANS  
INCLUSION IN WOMEN-ONLY SAFE HOUSES IN  
AOTEAROA NEW ZEALAND**

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## *Abstract*

Women-only spaces such as safe houses (or women's shelters) have always been places of safety and freedom for women to come together and empower each other without the influence of men. Recently, there has been a movement to exclude trans women from such spaces. While safe houses in Aotearoa New Zealand are generally inclusive of trans women, there are further practical measures which can be implemented to better support this inclusion. Furthermore, there is need for legal reform for trans rights, both in simplifying the process of legal transition, and in better preventing discrimination, including within the Intimate Partner Violence (IPV) sphere.

This paper begins by discussing law in Aotearoa New Zealand relating to trans rights and comparing this to the law in the United Kingdom, then analyses arguments against trans inclusion and explains why they do not stand under scrutiny. This paper then analyses how to support inclusive policies with practical measures, and how inclusive policies have generally been applied in Aotearoa New Zealand. This paper concludes that inclusive policies benefit everyone, including vulnerable minorities such as trans women.

Trans survivors of IPV should know with certainty, the same as every other survivor, that there are services available to support them should they need it. If they need to access an IPV service, they should know that they will be welcomed and supported from the moment they enter the door. Trans women are a marginalised and vulnerable group, whose interests have been absent from public consideration for far too long. It is time for us to take a look at ourselves and our society and question what we can do better, because we *can* do better. All we need to do is open our minds to the fact that our current system is not perfect.

**Key Words:** “*trans women*”; “*transgender*”; “*women-only spaces*”; “*Intimate Partner Violence*”; “*inclusion*”.

## *I Introduction*

Women-only spaces have always been intended to be places of safety and freedom for women to come together and empower each other without the influence of men. Safe houses, or women's shelters,<sup>1</sup> are especially so as they provide a safe place for women and their families to recover, usually from Intimate Partner Violence (IPV),<sup>2</sup> away from their perpetrators.

Recently, there has been a movement to exclude trans women from such spaces.<sup>3</sup> This paper will analyse the law, policy arguments and realities of trans inclusion in women-only spaces such as safe houses, with the aim of concluding that trans exclusion is not justified and inclusion should be supported and implemented with practical measures.

While safe houses in Aotearoa New Zealand are generally inclusive of trans women, there are further practical measures which can be implemented to better support this inclusion. These measures include partnership with Rainbow and trans communities and proactive advertisement of inclusive policies.

Furthermore, there is need for legal reform for trans rights, both in simplifying the process of legal transition, and in better preventing discrimination, including within the IPV sphere. This is unlikely to have a practical impact for safe houses in Aotearoa New Zealand, but it will remove loopholes which may be used by some organisations to exclude trans women

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1 'Safe house' is used to describe organisations which provide safe housing or shelters for women impacted by IPV. Overseas, it is more common to see the term 'women's shelters', but 'safe houses' is the more common term in Aotearoa.

(Email from Phillipa (Wellington Women's Refuge) to the author regarding this paper (27 May 2021)).

2 'Intimate partner violence' or 'IPV' is used in place of domestic violence or similar terms, as it encompasses a broader range of relationships. This explicitly includes gender-based violence, which is violence for the purpose of enforcing gendered power structures.

(Michael Munson Sheltering Transgender Women: Providing Welcoming Services (National Resource Centre on Domestic Violence and Force, Technical Assistance Guidance, September 2014),

<[https://vawnet.org/sites/default/files/materials/files/2016-09/NRC DV\\_TAG-TransWomenShelter-Sept2014.pdf](https://vawnet.org/sites/default/files/materials/files/2016-09/NRC DV_TAG-TransWomenShelter-Sept2014.pdf) at 2; Guidance For Supporting Trans Women For Women's Aid Groups in Scotland (Scottish Women's Aid, May 2015), <<https://womensaid.scot/wp-content/uploads/2018/03/Guidance-For-Supporting-Trans-Women-For-Womens-Aid-Groups-in-Scotland.pdf>> at 3).

3 'Trans woman' is used to refer to an individual who identifies as a woman but was assigned male sex at birth. This paper will use gender identity, or an individual's internal sense of gender as a marker of transition. Conversely, 'cis' or 'cisgender' is used where someone's sex at birth conforms with their internal sense of gender.

(Munson, above n 2 at 2; 13).

from women-only spaces. The planned legal reform currently being undertaken will resolve some of these issues.

### *A Scope and Outline*

Scholarship has emphasised the importance of including trans voices in conversations regarding trans issues.<sup>4</sup> Due to the nature of this paper as directed individual research, it was not possible to work alongside trans individuals in the writing of this paper. However, where possible I will centre articles written by trans individuals or involving consultation with trans individuals to balance my own cisgender experiences.

This paper chooses to focus on trans women due to the amount of discussion around inclusion of trans women in women-only spaces.<sup>5</sup> While similar issues may be faced by trans men and non-binary individuals, that is not the focus of this paper, as these important demographics require specific consideration of their own.

I became interested in this topic over the summer when I was asked to write a gender policy for Camellia House in my position as a summer clerk at Cooper Rapley Law in Palmerston North. Before this, transgender inclusion in safe houses had never occurred to me as a controversial subject, and rather as a given. I was very interested in the discussion and discourse around it.

This paper will begin by discussing law in Aotearoa New Zealand relating to trans rights and comparing this to law in the United Kingdom. I will then analyse arguments against trans inclusion and explain why they do not stand under scrutiny. This paper will then analyse how inclusive policies can be supported by practical measures, and how inclusive policies have generally been applied in Aotearoa New Zealand. I will then summarise my conclusions based on this analysis, with the expectation to conclude that inclusive policies benefit everyone, including vulnerable minorities, and there are no good arguments to rebut

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4 Stonewall and nfpSynergy Report: Supporting trans women in domestic and sexual violence services: Interviews with professionals in the sector (Stonewall, 2018), <[https://www.stonewall.org.uk/system/files/stonewall\\_and\\_nfpsynergy\\_report.pdf](https://www.stonewall.org.uk/system/files/stonewall_and_nfpsynergy_report.pdf)> at 2.

5 P Dunne “(Trans)forming single gender services and communal accommodations” (2017) *Social and Legal Studies* 26(5) <[https://research-information.bris.ac.uk/ws/portalfiles/portal/139271435/Bristol\\_Pure\\_Version\\_PD.pdf](https://research-information.bris.ac.uk/ws/portalfiles/portal/139271435/Bristol_Pure_Version_PD.pdf)> at 539.

this. As such, organisations should support their inclusive policies with practical measures, and work with trans individuals and representative organisations to ensure that women-only services are accessible to all women.

## *II The Legal Position in Aotearoa New Zealand*

### *A Protection from Discrimination*

The current legal position in Aotearoa New Zealand towards inclusion of trans women in women-only spaces is vague. Sex is included as a prohibited ground of discrimination within the New Zealand Human Rights Act 1993 (HRA), under s 21(1)(a).<sup>6</sup> This ground is covered by the right to freedom from discrimination under the New Zealand Bill of Rights Act 1990 (BORA), s 19(1).<sup>7</sup> Under HRA s 53, this applies specifically to land, housing, and other accommodation.<sup>8</sup>

However, the law also provides exceptions to freedom from discrimination. BORA s 19(2) holds that “Measures taken in good faith for the purpose of assisting or advancing persons or groups of persons disadvantaged because of discrimination... do not constitute discrimination.”<sup>9</sup> Similarly, the HRA s 55 provides an exception to s 53 regarding hostels, institutions, etcetera where accommodation is provided only for persons of the same sex. This means, for example, that it would be legal for a women-only safe house to deny accommodation to a man based on sex.

It is not entirely clear as to where trans women fit within this scenario, particularly as the Act uses ‘sex’ rather than ‘gender’. The position is especially blurry for trans women who have not ‘legally transitioned’ or had the sex on their birth certificate altered to match their gender.

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6 Human Rights Act 1993, s 21(1)(a).

7 Bill of Rights Act 1990, s 19(1).

8 Human Rights Act 1993, s 53.

9 Bill of Rights Act 1990, s 19(2).

However, on 13 April 2021 a Cabinet paper was released regarding strengthening hate speech or incitement provisions following the Christchurch terror attack.<sup>10</sup> This same Cabinet paper also recommended the explicit inclusion of gender identity, gender expression, sex characteristics and intersex status in the prohibited grounds of discrimination in the HRA, alongside a general recommendation to move hate speech protections from the HRA to the Crimes Act.<sup>11</sup> While the Government “has long maintained that transgender and gender-diverse people are covered by the Human Rights Act”, explicit inclusion would strengthen the protections and ensure the inclusion of trans women within women-only safe houses.<sup>12</sup> Due to the current Labour majority in Parliament, this reform seems inevitable.

Explicit inclusion would address the ambiguity of whether trans people are protected under the definition of ‘sex’ in the HRA.<sup>13</sup> During the passage of the Human Rights Bill, the Human Rights Commission’s suggestion to include ‘gender’ was not accepted, and instead ‘sexual orientation’ was included.<sup>14</sup> This fails to recognise the distinction between gender diversity and sexual orientation. It has been generally accepted that discrimination on the grounds of gender identity is already included within the HRA, though where or how is not certain.<sup>15</sup>

In contrast, the United Kingdom Equality Act currently protects trans people against discrimination under “gender reassignment”, rather than “sex”. The Act also clarifies that single-sex services must allow access for trans people in line with their “acquired gender”, without needing any legal affirmation of their gender.<sup>16</sup> However, similar to single-sex accommodation in Aotearoa New Zealand, it is legal for single-sex services in the United Kingdom to provide a different service or deny service to trans people if doing so achieves

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10 Hon Kris Faafoi, “Proactive release – Proposed changes to the incitement provisions in the Human Rights Act 1993” (13 April 2021) Cabinet paper, Office of the Minister of Justice <<https://www.justice.govt.nz/assets/Documents/Publications/Proactive-release-incitement-provisions.pdf>>.

11 Faafoi, above n 10.

12 Marc Daadler, “Up to three years in prison for hate speech under reforms” Newsroom (online ed, National, 16 April 2021).

13 *Mazengarb’s Employment Law (NZ)* (online ed, Lexis Advance) at 4021.10.

14 *Mazengarb’s Employment Law (NZ)*, above n 13 at 4021.10.

15 *Mazengarb’s Employment Law (NZ)*, above n 13 at 4021.10.

16 Stonewall and nfpSynergy Report, above n 4 at 19.

a legitimate aim.<sup>17</sup> According to Stonewall, this exception is not often used by safe houses in the United Kingdom, and there is debate as to whether it is useful to keep it as a safeguard.<sup>18</sup> Leaving loopholes like this for discrimination allows the possibility for individuals to apply their own prejudices against trans women when they approach safe houses, which fosters uncertainty in a vulnerable climate.

### *B Legal Change of Sex*

Similar to protection from discrimination, the current process for legal change of sex in Aotearoa New Zealand is under review. This planned reform will allow trans women to change their legal sex more easily, which will create greater ease of access to women-only spaces by removing any potential for exclusion on the basis of sex.

The current process for legal change of sex comes under the Births, Deaths, Marriages and Relationships Registration Act 1995 ss 28-33.<sup>19</sup> Under s 28(c)(i), this is determined by medical transition, often requiring surgical reassignment surgery, either at the time or at a future date.<sup>20</sup> *“Michael” v Registrar-General of Births, Deaths and Marriages* affirmed that some degree of permanent change is required.<sup>21</sup> This process is often time-consuming and expensive and is currently under review due to the criticism it has received.<sup>22</sup> Until the law is changed, the application fees have been waived, though there remain medical and legal costs.<sup>23</sup>

These costs have remained for a while, since the proposed Births, Deaths, Marriages and Relationships Registrations Bill was deferred on 25 February 2019 due to changes made to the Bill by the select committee without adequate public consultation, as they changed the

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<sup>17</sup> Stonewall and nfpSynergy Report, above n 4 at 19.

<sup>18</sup> Stonewall and nfpSynergy Report, above n 4 at 9.

<sup>19</sup> Births, Deaths, Marriages and Relationships Registration Act 1995.

<sup>20</sup> Births, Deaths, Marriages and Relationships Registration Act 1995, ss 28(c)(i), 31; Annabel Markham, “Transgender ideology and the law” [2019] NZLJ 14 at 14.

<sup>21</sup> Markham, above n 20 at 15.

<sup>22</sup> Richard Ninness on behalf of Hon Tracey Martin, “Births, Deaths, Relationships and Registrations Bill to be deferred” (25 February 2019) Internal Affairs, Beehive.govt.nz

<<https://www.beehive.govt.nz/release/births-deaths-marriages-and-relationships-registration-bill-be-deferred>>; Markham, above n 20 at 15.

<sup>23</sup> Richard Ninness on behalf of Hon Tracey Martin, “Government reduces barrier to changing birth registration” (1 August 2019) Internal Affairs, Beehive.govt.nz

<<https://www.beehive.govt.nz/release/government-reduces-barriers-changing-birth-registration>>.



Bill to allow for gender self-identification.<sup>24</sup> Alongside inadequate consultation, the Minister also cited issues with the clarity of the changes.<sup>25</sup> There was no update on the progress of the Bill until March 2021 when Minister for Women Jan Tinetti committed to getting the Bill moved into law.<sup>26</sup> This new Bill aims to allow self-identification of legal gender, and with the current majority it appears inevitable that it will become law.<sup>27</sup> This will allow trans women easier access to women-only spaces, and reduce the potential opportunities for discrimination.

Adjusting Aotearoa New Zealand's gender-change process to allow for self-identification will bring us in line with the law in the United Kingdom. Under the United Kingdom Gender Recognition Act 2004, a trans person may be issued a Gender Recognition Certificate if they can show that they have gender dysphoria, have lived in their acquired gender for at least two years, and intend for this to be permanent.<sup>28</sup> This process for changing gender does not require any medical or surgical procedures, and at the time it was enacted the United Kingdom was ostensibly the first state to employ such a liberal scheme.<sup>29</sup> Sharpe notes that this severs "the link between sexed status and the physical body".<sup>30</sup> This is however, by no means a perfect solution, and issues remain with the permanence of the change, the binary structure of the Act, and the categorisation of trans status as a mental illness.<sup>31</sup>

Compared to Aotearoa New Zealand law, the United Kingdom law is broader and more fluid. Important barriers to transitioning, such as medical costs, are removed under the United Kingdom's scheme, and trans people are explicitly protected under the law. However, United Kingdom law still allows some room for discrimination against trans

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24 Ninness, above n 22.

25 Ninness, above n 22.

26 Jason Walls "Mothballed gender self-ID law back as a 'priority' for Govt – will pass this year, Minister says" *The New Zealand Herald* (online ed, New Zealand, 14 March 2021).

27 Denise Piper "Bill simplifying birth certificate sex change gains momentum" *Stuff* (online ed, New Zealand, 13 June 2021); For further discussion of this issue see Eddie Crawshaw "Self-identification Under the Births, Deaths, Marriages and Relationships Registration Bill: A Compassionate and Progressive Step" (LLB Dissertation, Victoria University of Wellington, 2020).

28 United Kingdom Gender Recognition Act 2004, s 2.

29 Andrew N. Sharpe "A Critique of the Gender Recognition Act 2004" (2007) *Journal of Bioethical Inquiry* 4 at 33-43, <<https://link.springer.com/article/10.1007/s11673-007-9032-y>>.

30 Sharpe, above n 29.

31 Sharpe, above n 29.

people under the Equality Act, regardless of whether they have gained legal recognition of their gender or not. While this exception is not often used, it remains an issue for trans inclusion in women-only spaces.

The current position of Aotearoa New Zealand's law is murky and vague, particularly when contrasted against other legal systems with more robust laws around gender identity. Some legal reform is required in Aotearoa New Zealand to provide clarity and give women-only spaces certainty on who is legally included in their services, and trans women certainty on where they fit in services. With legal reform now appearing inevitable, all that remains is for planned reform to be followed through, both with enactment and practical implementation.

### *III Arguments Against Inclusion and Rebuttals*

Since the law is murky as to whether trans women are included in women-only spaces, the default position for services should be inclusion, as is supported by the current legal reform. This is especially so as the loophole for same-sex services to discriminate on the basis of sex allows individuals to apply their own prejudices, including against trans people. Arguments for inclusion aim to negate this prejudicial discretion, though there remain some who argue in opposition. Those who argue against inclusion often refer to themselves as 'gender-critical'.<sup>32</sup> Other terms used in literature include 'transphobic', 'trans-exclusionary' and 'radical feminists'. This paper will largely use the phrase 'those opposing inclusion', as it is descriptive without importing value judgements.

Arguments made by those opposing inclusion span a variety of topics, which can broadly be broken into; the definition of 'woman', the purpose of segregated spaces, cisgender discomfort and privacy, enabling violent men access to women-only spaces, resource shortages and segregation. These arguments all interlink, and largely centre around who is included in the definition of 'woman', as those opposing inclusion hope that by excluding

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32 Charlotte Jones and Jen Slater, "The toilet debate: Stalling trans possibilities and defending 'women's protected spaces'" (2020) *The Sociological Review* 68(4) at 834-851, <<https://journals.sagepub.com/doi/full/10.1177/0038026120934697>>.

trans women from the definition of ‘woman’, they will also be excluded from women-only spaces.

It is worth noting the pertinence of this debate within the IPV sphere, particularly when there is a potential legal loophole for discrimination by safe houses should they choose to oppose inclusion. The area of IPV is inherently gendered, and services are often built on the story of “the stronger/bigger man controlling the weaker/smaller woman”.<sup>33</sup> Inclusion of trans women is challenging to the normative gender binary which defines IPV spaces. This paper will outline the arguments posed by those opposing inclusion and aim to rebut those arguments.

### *A Definition of ‘Woman’*

Arguments against inclusion of trans women in women-only spaces tend to centre on the idea that trans women are not ‘real women’. Such arguments are based on the fact that trans women are socialised as male, and they have different biology.<sup>34</sup> Zanghellini suggests that defining ‘woman’ solely by biology is a political choice, and it ignores the distinction between gender and sex.<sup>35</sup>

With trans activists now moving towards the idea of trans women being able to live as women without any medical intervention, the idea of determining ‘women’ based on biology is increasingly problematic.<sup>36</sup> ‘Transitioning’ means different things to different

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33 Julia K. Walker, “Investigating Trans People’s Vulnerabilities to Intimate Partner Violence/Abuse” (2015) *Partner Abuse* 6(1) at 107-125, <<https://search.proquest.com/docview/1648966987?pq-origsite=primo>>.

34 Potential impacts of GRA reform for cisgender women: trans women’s inclusion in women-only spaces and services (GRA EQIA Literature Search, Document 5, November 2019), <<https://www.gov.scot/binaries/content/documents/govscot/publications/foi-eir-release/2020/01/foi-202000011201/documents/foi-202000011201-document-5---earlier-version-of-literature-review/foi-202000011201-document-5---earlier-version-of-literature-review/govscot%3Adocument/FOI-202000011201%2BDocument%2B5%2B-%2BEarlier%2BVersion%2Bof%2BLiterature%2BReview.pdf>> at 5; Scottish Women’s Aid, above n 2 at 8; Jennifer Earles “The “Penis Police”: Lesbian and Feminist Spaces, Trans Women, and the Maintenance of the Sex/Gender/Sexuality System” (2019) *Journal of Lesbian Studies* 23(2), <<https://www.tandfonline.com/doi/full/10.1080/10894160.2018.1517574>>.

35 Aleardo Zanghellini “Philosophical Problems With the Gender-Critical Feminist Argument Against Trans Inclusion” (2020) *Sage Publications* 10(2), <<https://search.proquest.com/docview/2429457839?pq-origsite=primo>>.

36 Belinda Sweeney “Trans-ending women’s rights: The politics of trans-inclusion in the age of gender” (2004) *Women’s Studies International Forum* 27(1) at 75-88 <<https://www.sciencedirect.com/science/article/pii/S0277539503001602>>.

people, with Munson identifying three forms of gender transition: social, medical and legal. For some, transition is medical, and for some it is social.<sup>37</sup> Additionally, defining ‘transition’ by medical intervention fails to recognise the prohibitive financial barrier of medical transition, as only a small number of transitional surgeries in Aotearoa New Zealand are publicly funded.<sup>38</sup>

This changing definition of ‘woman’ challenges societal ideas of gender roles, and those who uphold them. But there are many ways to be a woman, even if you were born male.<sup>39</sup> Surely, if feminism is about opposing the oppression of women, widening the definition of ‘woman’ furthers the goal of liberation, and conversely, restricting the definition of ‘woman’ only furthers the goals of the patriarchy.<sup>40</sup> Earles affirms that breaking down gender barriers is a direct challenge to the patriarchal framework of gender, which furthers the feminist agenda.<sup>41</sup> All women benefit from a society where there is less prescription and expectation of how we should act and appear.

Furthermore, trans women are oppressed under the same system as cis women, they engage with others as women, and they may have legal recognition of their status as women.<sup>42</sup> Excluding trans women on the basis of biology is out of step with the law in jurisdictions such as the United Kingdom, and will be out of step in Aotearoa New Zealand if the promised reform is undertaken.<sup>43</sup> While trans women experience different types of gender-based oppression, and are socialised differently, they are harmed by the same system that harms cis women, and they belong in women-only spaces.<sup>44</sup>

Restriction and prescription on the definition of women leads to exclusion of trans women from women-only spaces. Those who oppose inclusion do not include trans women in their

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37 Munson, above n 2 at 13; Paula Manners “Trans Inclusion in Women-Only Spaces” (2019) *CONCEPT* 10(1), <<http://concept.lib.ed.ac.uk/article/view/3000/3986>>.

38 “Health Care for transgender New Zealanders” (3 December 2020) Ministry of Health <<https://www.health.govt.nz/your-health/healthy-living/transgender-new-zealanders/health-care-transgender-new-zealanders>>.

39 Sweeney, above n 37.

40 Talia Mae Bettcher “Trans Feminism: Recent Philosophical Developments” (2017) *Philosophy Compass* 12(11), <<https://onlinelibrary.wiley.com/doi/full/10.1111/phc3.12438>> at 2.

41 Earles, above n 34.

42 Dunne, above n 5 at 344.

43 Dunne, above n 5 at 357.

44 Bettcher, above n 41 at 8.

definition of ‘woman’, and therefore equate opening women-only spaces to trans women to “welcoming cisgender males”.<sup>45</sup> McKinnon criticises that this restriction imputes that trans women are men, which is not true.<sup>46</sup>

A widening definition of ‘woman’ can be seen generally reflected within the IPV sector. Traditionally, many safe houses were designed in a cisnormative, “white, Eurocentric, middle class way”, though this is now being challenged and the availability of services is being widened.<sup>47</sup> Scottish Women’s Aid argues that cis women who step outside gender norms still identify as women and are perceived to be women, but the same courtesy is not extended to trans women.<sup>48</sup> This demonstrates how the IPV sector has expanded their definition of ‘woman’, but there is some work still to be done regarding the inclusion of trans women.

Opening women-only spaces to trans women is challenging to strict definitions of ‘woman’ and requires un-learning of societal and patriarchal expectations. However, reframing of the definition is benefiting and liberating to all women. If we aim to live in a society where we are not defined by what another person thinks a woman ought to be, then it is not appropriate for us to prescribe a strict definition on others. As put by Manners, “if those oppressed under patriarchy are busy fighting each other, then we will not have the strength or the resources left to tackle the roots of our oppression at its source... Why must we accept this discourse as it is presented to us?”<sup>49</sup> It is also noteworthy that extending women-only spaces to trans women is only enlarging the definition of ‘woman’ to an additional 1.2% of Aotearoa New Zealand’s population.<sup>50</sup>

### *B Purpose of Segregated Spaces*

Those who oppose inclusion build on excluding trans women from the definition of ‘woman’ by arguing that inclusion of trans women defeats the purpose of women-only

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45 Dunne, above n 5 at 351-352.

46 Bettcher, above n 41 at 6.

47 Stonewall and nfpSyngery Report, above n 4 at 27.

48 Scottish Women’s Aid, above n 2 at 8.

49 Manners, above n 38 at 12.

50 “Number of Trans People in NZ” (2012) Gender Minorities Aotearoa <<https://genderminorities.com/2018/09/11/number-of-trans-people-in-nz/>>.

spaces. Women-only spaces were built on “consciousness raising”. Women were able to come together and discuss how gender impacted them, without the influence of men. It enabled discussion of rape, IPV, abortion, and other gendered issues, which led to a deeper understanding of how the patriarchy oppresses women.<sup>51</sup> Women-only spaces are “a fundamental challenge to the structure of power.”<sup>52</sup> Since their conception, these spaces have transformed and grown, with many now being state-funded.<sup>53</sup> Safe houses have become a natural extension of what were initially meeting spaces.<sup>54</sup> While women-only spaces were founded as places of togetherness and consciousness-raising, it is possible for women to be conscious of their own oppression and remain blind to how they privilege from the oppression of others, such as trans women.<sup>55</sup>

Those who oppose inclusion argue that trans women cannot empathise with the experiences of cisgender women, who have been socialised as submissive within a patriarchal society.<sup>56</sup> However, campaigners for trans inclusion argue that trans women are oppressed under the same patriarchy for the same reasons as cis women, and therefore have a place within the discussion.<sup>57</sup> Relating specifically to safe houses, trans women who are survivors of IPV need the use of safe houses in the same manner that cis women do.<sup>58</sup> If anything, trans people are greater oppressed under our patriarchal society as a much smaller minority.<sup>59</sup>

I would also add that trans women being socialised for a lesser time as women should not displace them from women-only spaces, in the same manner that girls and young women are not excluded from women-only spaces simply because they have been socialised as women for a lesser time. Furthermore, the fact that trans women do not identify as male

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51 Manners, above n 38 at 3.

52 Manners, above n 38 at 6.

53 Lorene Hannelore Gottschalk “Transgendering women’s space: A feminist analysis of perspectives from Australian women’s services” (2009) *Women’s Studies International Forum* 32(3) at 167-178, <<https://www.sciencedirect.com/science/article/pii/S0277539509000478>> at 168.

54 Sweeney, above n 37.

55 Manners, above n 38 at 4.

56 Sweeney, above n 37.

57 Manners, above n 38 at 4.

58 Sweeney, above n 37.

59 Walker, above n 33.

and have deliberately undertaken an often-difficult social transition can be expected to undermine any male socialisation they may have received.<sup>60</sup>

Gottschalk uses her perception of trans women as men to argue that the presence of men prevents women from opening up in women-only spaces.<sup>61</sup> A similar argument could be used to exclude any woman who is not perceived to conform to traditional forms of gender expression. I pose that it is not the fault of a trans woman if others perceive her as a man, and she should not be removed from a space that she has a right to be in due to the bias of others. Imagine if you had red hair and you walked into a safe house and someone asked you to leave because they did not feel comfortable opening up around someone with red hair. You would be confused and think it was unfair. In this kind of situation, it is possible for accommodations to be made for both parties without either being excluded from the space. For example, one of the safe house providers interviewed by Stonewall explained that they would “support and educate” anyone who expressed an issue with sharing a space with a trans woman, as they would with any equality issue.<sup>62</sup> Women-only spaces can be shared by all women without oppressing trans women.

### *C Cisgender Discomfort*

Alongside the purpose of segregated spaces, perhaps one of the most common issues raised by those opposing inclusion is cisgender discomfort, or ‘privacy’ for cis women. The Scottish Government suggests that cisgender discomfort stems from a feeling of violation of privacy and from potential exposure to “unnatural” bodies.<sup>63</sup> Dunne explains that, “A trans woman, who accesses her preferred gendered-space, is considered a male interloper whose presence inappropriately subjects occupants to the ‘male gaze’.”<sup>64</sup>

Trans inclusive scholars have responded to privacy concerns by pointing out that trans users of women-only facilities do not invade privacy more than anyone else who uses the

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60 Zanghellini, above n 35.

61 Gottschalk, above n 54 at 177.

62 Stonewall and nfpSyngery Report, above n 4 at 15.

63 GRA EQIA Literature Search, above n 34 at 5.

64 Dunne, above n 5 at 543.

facility.<sup>65</sup> In fact, it would be absurd to force trans people to use gendered facilities according to their sex at birth. This was demonstrated by a social media movement following a trans exclusionary bathroom policy in North Carolina, in the United States, which showed bearded trans men showering in women-only facilities.<sup>66</sup> Dunne adds that we do not exclude people who have bodily diversity unless they are transgender. For example, men with gynecomastia (breast tissue) are still men, intersex women are still woman, women who have had a double mastectomy are still women.<sup>67</sup> Dunne also explains that trans bodies are “rarely, if ever, visible” due to clothing and cubicles.<sup>68</sup> Dunne recommends that privacy concerns can be addressed by service providers enhancing privacy options for all users, rather than excluding trans women.<sup>69</sup> Bathrooms and changing rooms have cubicles for a reason, and if a cis woman is worried about her privacy, perhaps she should make use of them.

A particular fear raised within the IPV sphere and safe houses is that a cis woman who has survived IPV by a man may be triggered by the presence of a trans woman if she perceives her to be a man.<sup>70</sup> In response to this argument, Manners points out that this concern could lead to the exclusion of cis lesbians or anyone else who does not conform to one survivor’s expectations of what a woman should look like.<sup>71</sup> Imagine if we critically assessed all those who accessed women-only IPV services to check if they appeared “sufficiently woman-like”.<sup>72</sup> This would doubtless seem subjective and arbitrary, and no different to historical patriarchal standards for women, such as not allowing a woman at a dance without a dress. In this situation, we are so worried about being subjected to the male gaze that we become its enforcers.

If we are worried about a particular survivor being triggered by her perception of a trans woman as a man, this highlights the need for individual risk assessments within IPV services to respond to the triggers of individual survivors, as will be illustrated in detail

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65 Dunne, above n 5 at 543.

66 Dunne, above n 5 at 544.

67 Dunne, above n 5 at 547.

68 Dunne, above n 5 at 545.

69 Dunne, above n 5 at 539.

70 Dunne, above n 5 at 548.

71 Manners, above n 38 at 8.

72 Manners, above n 38 at 8.



later in this paper.<sup>73</sup> Manners analogises that if a survivor found a particular accent triggering, they would not exclude all people with that accent from their service. They would instead “develop bespoke services” to meet their needs.<sup>74</sup>

Cisgender discomfort or privacy concerns can be sufficiently mitigated by enhanced privacy provision for all users of a service, and individual risk assessments. There is no need to exclude users from a service simply because they may make some users uncomfortable. Service providers should instead encourage open-mindedness and inclusion of bodily diversity, as exclusion of trans women based on potential discomfort for some users is a slippery slope to exclusion of all those who do not conform with traditional expectations of women.

We would never imagine excluding a queer woman from a safe house because some IPV survivors may only consider heterosexual women to be ‘true women’; or a woman who wears a head covering like a hijab, or a woman who is infertile, or a woman with a disability. The prejudice of humanity is unfortunately boundless, and if we are constantly worried about what some people may be uncomfortable with, we will find ourselves to be the true discriminators. One person’s discomfort is not grounds for another person’s exclusion.

#### *D Eroding Protection from Violent Men*

Another of the key arguments used by those opposing inclusion is that allowing trans inclusion in women-only services would erode gender boundaries and compromise the integrity of gendered spaces, allowing violent men entry.<sup>75</sup> This argument is used to oppose law reform which allows self-declaration of gender, as there is fear that violent men will be able to obtain fraudulent recognition as women to gain access into women-only spaces to perpetrate violence.<sup>76</sup>

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73 GRA EQIA Literature Search, above n 34 at 6.

74 Manners, above n 38 at 8-9.

75 Stonewall and nfpSyngery Report, above n 4 at 2.

76 GRA EQIA Literature Search, above n 34 at 8; Zanghellini, above n 35.

This argument ignores that fact that many IPV services, including safe houses, have robust risk assessment procedures.<sup>77</sup> Many IPV services report that they have never had a perpetrator of IPV attempt to access their services to continue perpetrating IPV, but they are confident their risk assessment procedures would prevent this from happening.<sup>78</sup>

This argument is also linked to the “transgender menace” myth, that trans women themselves are a threat to the safety of cis women.<sup>79</sup> These arguments are again based on the misgendering of trans women as men. Dunne explains that those opposing inclusion think that by allowing trans women access to women-only spaces, it will inevitably lead to sexual intercourse, both consensual and non-consensual. This is based on the premise that a man and a woman in an intimate space together will inevitably have sex.<sup>80</sup> Gottschalk argues that “Trans-inclusion... is one of the greatest threats faced by women.”<sup>81</sup> Dunne disagrees, arguing this view reflects a “deeply engrained social prejudice.”<sup>82</sup>

The idea that a trans woman and a cis woman together in a private space will inevitably have sex is profoundly heteronormative. If cis women who are attracted to women can be trusted to share a space together, which they can, then so too should trans women.<sup>83</sup> People are diverse, and have diverse sexualities, regardless of their sex and gender. This argument also overlooks that most people when accessing women-only services have other things on their mind aside from sexual intercourse. This is particularly so for IPV services.

The idea that a person with a penis is inherently a sexual predator is therefore sexist and heterosexist.<sup>84</sup> Biology does not define exclusion in any other respect, yet it is used as justification for excluding trans women. While we know men are more likely to pose a risk of sexual assault towards children, we allow them to work in jobs where they come into

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77 Stonewall and nfpSyngery Report, above n 4 at 18.

78 Stonewall and nfpSyngery Report, above n 4 at 22.

79 Dunne, above n 5 at 539.

80 Dunne, above n 5 at 350.

81 Gottschalk, above n 54 at 177-178.

82 Dunne, above n 5 at 351.

83 Dunne, above n 5 at 352.

84 Dunne, above n 5 at 352.

contact with children because we recognise that only some men pose an actual risk and we can largely identify them through risk assessments.<sup>85</sup>

Arguments based on the idea that eroding gender boundaries will allow for violent men to gain access to women-only spaces, and that trans women themselves are violent men, do not stand up under scrutiny because trans women are not men. In fact, they have undertaken a difficult social and sometimes medical and legal transition to *not be* men. This argument also over-exaggerates the extent to which gender boundaries need to be eroded to allow for trans women to access women-only spaces since trans women are a statistically small minority. Trans inclusion does not erode gender boundaries, it simply broadens them by broadening the category of woman, as discussed above. Additionally, ‘violent men’ arguments ignore the fact that trans women themselves face great risk of sexual assault and require the protection of women-only spaces.<sup>86</sup>

Trans women should not be excluded from services because of the violence of cisgender men, especially when they are survivors of violence themselves. If trans women pose a risk within a safe house environment, this can be established through an individual risk assessment procedure, as for every other woman who accesses the service. Trans women do not pose an inherent risk to cis women.

### *E Resources*

Another concern held by some who oppose inclusion is that allowing trans women into women-only services, particularly IPV services, will drain scarce resources necessary to provide services to cis women or necessitate difficult logistical arrangements. However, Munson argues that often “very minor adjustments” can be made to accommodate trans IPV survivors.<sup>87</sup>

Some who oppose inclusion argue that separate services should be created, or supported, for trans women.<sup>88</sup> However, Stonewall discusses how specialist LGBT IPV services are

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85 Zanghellini, above n 35.

86 Scottish Women’s Aid, above n 2 at 12-13.

87 Munson, above n 2 at 11.

88 Zanghellini, above n 35.

at particular risk of funding cuts, meaning that they have limited capacity and resources to support trans women in comparison to ‘mainstream’ women-only IPV services.<sup>89</sup> It is also worth noting that, while specialist LGBT IPV services exist in some countries, they are often small and cannot keep up with demand. Manners describes the idea of segregated services as a “facetious suggestion [which] ignores the fundamental difficulties of setting up a specialist service for such a statistically small percentage of society.”<sup>90</sup>

Perhaps the most problematic part of this argument is the idea raised by Gottschalk that trans women should have separate services and spaces because, while trans women have a right to be free from discrimination, “these rights should not transcend the rights of women born and raised female”.<sup>91</sup> This discriminates against trans women, no matter how it is worded, and it enforces a social hierarchy in which trans women are at the bottom. The idea that trans women should have separate services because they cannot be equal with cis women is incredibly problematic, and it is at odds with the morals of a free and democratic society. This can be analogised to similar “separate-but-equal” programs, which we have learned by now, are never equal.<sup>92</sup> Additionally, trans women existing without discrimination does not erode the right of cis women to be born and raised female, in fact it has very minimal impact on cis women at all.

Trans women must be included in women-only services. Not only is it the most practical approach, but it is also the most equal and fair one.<sup>93</sup> Trans women are women; they suffer from similar discrimination and oppression and have the same need for the services provided in women-only centres, such as IPV services.

### *F Summary*

This outline of arguments is by no means extensive, and there are many arguments and rebuttals which are not within the scope of this paper. However, this coverage of some of the key arguments should generally demonstrate how arguments made by those opposing

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89 Stonewall and nfpSyngery Report, above n 4 at 25.

90 Manners, above n 38 at 12.

91 Gottschalk, above n 54 at 170.

92 Zanghellini, above n 35.

93 Zanghellini, above n 35.

inclusion are significantly flawed. As put by the late Jess Phillips, it is important that we can have a conversation about this topic, rather than a fight.<sup>94</sup>

As IPV organisations are adaptive services which always cater to individual needs, there is room for the necessary adjustments to include trans women in women-only services, and there is no justification for an “arbitrary sacrifice” of a “vulnerable minority group”.<sup>95</sup> The arguments in favour of inclusion are not only more reasoned than those for exclusion, but they also present inclusion as more pragmatic and feasible. It costs cis women minimally to include trans women in women-only spaces and benefits society in general by extending women-only services to most people who are impacted by their status as a gender minority. Not only this, but denial of women-only spaces to trans women is a denial of their humanity and is “ipso facto harmful.”<sup>96</sup> Further, as the next section discusses, it is entirely possible to implement inclusive policies in these spaces which accommodate both cis and trans women.

#### *IV Implementation of Inclusive Policies*

Arguments made by those opposing inclusion tend to ignore that trans women seeking access to women-only services have a very real need for the services provided. This is especially the case for access to IPV services such as safe houses. Munson suggests that “Every survivor is a person first” and denying trans survivors access to services is unprofessional and unethical.<sup>97</sup>

The last thing that trans women need, when seeking help for IPV and abuse, is further questioning of their identities by the people in services intended to help them.<sup>98</sup> “Like all victims of violence, transgender victims want and need to be respected, heard, supported and believed.”<sup>99</sup> In particular, trans women may be prevented from expressing themselves

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94 Stonewall and nfpSyngery Report, above n 4 at 4.

95 GRA EQIA Literature Search, above n 34 at 1; Dunne, above n 5 at 356; Manners, above n 38 at 13.

96 Zanghellini, above n 35.

97 Munson, above n 2 at 1.

98 Stonewall and nfpSyngery Report, above n 4 at 2 and 24.

99 “Resources for supporting transgender victims of relationship violence and sexual assault” (2 October 2014) New Zealand Family Violence Clearinghouse <<https://nzfvc.org.nz/news/resources-supporting-transgender-victims-relationship-violence-and-sexual-assault>>.

as a woman due to IPV, which makes any kind of visual or biological requirements inappropriate.<sup>100</sup>

While there is undisputed need for trans women to have access to IPV services, the statistics for trans women impacted by IPV differ greatly.<sup>101</sup> Stonewall suggests that, while 7.5% of all women experience IPV, 16% of trans women experience it.<sup>102</sup> Additionally, 24% of those do not tell anyone about the IPV they are experiencing.<sup>103</sup> Scottish Women's Aid suggests that even as many as 50% of trans women might experience IPV.<sup>104</sup> Jordan, Mehrotra and Fujikawa clarify these differing numbers as 54% of trans women experiencing IPV, 24% experiencing severe physical IPV, and 47% experiencing sexual violence. Though the numbers in this area differ, it is clear that trans women are particularly vulnerable to IPV, which should be the most persuasive argument for their inclusion.<sup>105</sup>

Trans women also experience a different kind of abuse specific to their trans status. Some ways in which trans abusers may hold power over trans people include:

- (1) Withholding gender-affirming medication;
  - (2) Refusing to use the trans woman's correct pronouns and name;
  - (3) Convincing the trans woman that no one would believe their trans status;<sup>106</sup>
  - (4) Joking about the trans woman's appearance;
  - (5) Touching parts of the trans woman's body she is not comfortable being touched;
- and
- (6) Isolating the trans woman from her friends and family.<sup>107</sup>

In the United Kingdom, it is also easier for partners of trans women to perpetrate abuse because under the Gender Recognition Act, trans people who married before their transition must get either their partner's consent or a divorce before they are able to obtain

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100 Scottish Women's Aid, above n 2 at 12-13.

101 Sid P. Jordan, Gita R. Mehrotra and Kiyomi A. Fujikawa "Mandating Inclusion: Critical Trans Perspectives on Domestic and Sexual Violence Advocacy" (2019) *Violence Against Women* 26(6-7) at 531-554, <<https://journals.sagepub.com/doi/full/10.1177/1077801219836728>>; Walker, above n 33.

102 Stonewall and nfpSyngery Report, above n 4 at 6.

103 Stonewall and nfpSyngery Report, above n 4 at 6.

104 Scottish Women's Aid, above n 2 at 4.

105 Dunne, above n 5 at 549.

106 Stonewall and nfpSyngery Report, above n 4 at 6.

107 Scottish Women's Aid, above n 2 at 4.

legal recognition of their gender.<sup>108</sup> Walker adds that sexual abuse is especially ‘taboo’ for trans people because many suffer from body dysmorphia, and fear physical investigations into sexual abuse.<sup>109</sup>

Even for trans-inclusive safe houses, there is more they can do to connect with trans communities and train their staff in inclusive policies.<sup>110</sup> Manners identifies that many trans women “remain unsure if services are willing and able to provide them with the support that they need.”<sup>111</sup> Jordan, Mehrotra and Fujikawa also note that safe houses need to be aware of the difficult relationship between the trans community and the Police, which deters trans women from seeking help for IPV.<sup>112</sup>

It is also important to acknowledge that, while safe houses and IPV services often try to be inclusive, their services are inherently cisnormative.<sup>113</sup> Pyne suggests that this is contributed to by the lack of trans content within the social work curriculum.<sup>114</sup> “Under the assumption of the universality of cis experience, no information is collected or imparted about trans communities.”<sup>115</sup> Trans women are marked as outsiders from the moment they enter the cisnormative spheres of women-only spaces, whether this comes from deliberate transphobia or passive cisnormativity.<sup>116</sup> This highlights the importance of producing information about trans people and integrating such resources into social services.<sup>117</sup> It is important that we examine not only discrimination, but also passive exclusion.<sup>118</sup>

This may leave some service providers questioning how they may displace an assumption of cisnormativity and explicitly open their service to trans users. Munson has suggested the following in relation to interacting with trans individuals:

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108 Stonewall and nfpSyngery Report, above n 4 at 6.

109 Walker, above n 33.

110 Stonewall and nfpSyngery Report, above n 4 at 23.

111 Manners, above n 38 at 9.

112 Jordan, Mehrotra and Fujikawa, above n 102.

113 Jake Pyne: “UNSUITABLE BODIES: Trans People and Cisnormativity in Shelter Services” (2011) Canadian Social Work Review 28(1),

<[https://www.jstor.org/stable/41658838?sid=primo&seq=1#metadata\\_info\\_tab\\_contents](https://www.jstor.org/stable/41658838?sid=primo&seq=1#metadata_info_tab_contents)> at 131.

114 Pyne, above n 114 at 131.

115 Pyne, above n 114 at 133.

116 Pyne, above n 114 at 133.

117 Pyne, above n 114 at 133.

118 Pyne, above n 114 at 134.

- (1) Using gender neutral terminology when addressing individuals using their services if their pronouns are unknown;<sup>119</sup>
- (2) Asking individuals using their services for their preferred name and pronouns when meeting them;<sup>120</sup>
- (3) Requiring the same legal documents from everyone, regardless of their gender history and regardless of whether their preferred name and gender match their legal information;<sup>121</sup>
- (4) Keeping all personal information confidential, including gender histories; and<sup>122</sup>
- (5) Implementing and upholding an anti-discrimination policy in relation to gender identity and communicating the policy to all service users.<sup>123</sup>

In addition, Munson has suggested that safe houses should also implement the following:

- (1) Providing private spaces for dressing and washing for all individuals residing in a safe house;<sup>124</sup>
- (2) Providing at least one gender-neutral or all-gender bathroom on site;<sup>125</sup>
- (3) Recognising the essential nature of gender-affirming interventions to some individuals, and helping them to access these interventions where necessary and possible;<sup>126</sup>
- (4) Being explicit about their trans inclusive policy in promotional or online material;<sup>127</sup>
- (5) Having a clear anti-discrimination policy in relation to sexual orientation and gender identity;<sup>128</sup>
- (6) Ensuring that local LGBT communities and organisations are aware of their inclusivity policy; and
  - (a) Undertaking staff training with LGBT specialist organisations; and

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119 Munson, above n 2 at 6.

120 Munson, above n 2 at 6.

121 Munson, above n 2 at 4.

122 Munson, above n 2 at 6.

123 Munson, above n 2 at 12.

124 Munson, above n 2 at 10.

125 Munson, above n 2 at 10.

126 Munson, above n 2 at 13.

127 Munson, above n 2 at 4.

128 Munson, above n 2 at 12.



- (b) Developing relationships and partnerships with LGBT specialist organisations; and<sup>129</sup>
- (7) Undertaking staff training in their inclusivity policy and ensuring that all staff are confident and capable of applying the measures to uphold it.<sup>130</sup>

Manners emphasises that these measures are particularly important because “a majority of LGBT people assume that [safe houses] are not for them... It is therefore incumbent on services to be proactive...”<sup>131</sup> Manners adds that it is particularly important to work with trans people when constructing inclusive environments.<sup>132</sup>

Stonewall reaffirms that “Trans voices need to be at the forefront of any of these conversations.” This avoids making assumptions about the needs and wants of trans people and ensures that the result is effective.<sup>133</sup> Munson adds that this will raise awareness among potential trans users of IPV services that the relevant safe house is welcoming and can be trusted.<sup>134</sup> All of this works towards a relationship of trust, respect and empowerment, which is essential within an IPV or safe house service.<sup>135</sup>

It is noteworthy that a lot of safe houses and IPV services have long histories of supporting and working with trans women, even if they do not have an official policy relating to trans statuses. This was supported by Stonewall’s survey of IPV services in the United Kingdom.<sup>136</sup> Stonewall has suggested that legal reform often has minimal impact on the running of safe houses since such services carry out thorough risk assessments for every woman who accesses their services, to ensure every woman gets the support they need in their individual circumstances.<sup>137</sup>

The late Jess Phillips described:<sup>138</sup>

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129 Munson, above n 2 at 11.

130 Munson, above n 2 at 12.

131 Manners, above n 38 at 11.

132 Manners, above n 38 at 14.

133 Stonewall and nfpSyngery Report, above n 4 at 25.

134 Munson, above n 2 at 11.

135 New Zealand Family Violence Clearinghouse, above n 100.

136 Stonewall and nfpSyngery Report, above n 4 at 2.

137 Stonewall and nfpSyngery Report, above n 4 at 2.

138 Stonewall and nfpSyngery Report, above n 4 at 4.

I know from my time working at a refuge that every woman who comes through your door will need personalised support. One day you might be helping a woman with uncertain immigration status and no recourse to public funds. Another day you might be supporting a woman whose partner is threatening to make her trans history public if she leaves.

Trans women have a particular set of risks and needs, though nearly every woman who accesses a safe house receives attention for their individual needs; whether they stem from culture, religion, sexual orientation or anything else.<sup>139</sup>

I have explained that risk assessments can be used to address many of the worst fears of those who oppose inclusion. It is difficult to find a template for these robust risk assessments online, due to their personal nature, but all the data collected by Stonewall has agreed that a risk assessment would be more than enough to protect users of a service in a situation such as the following.<sup>140</sup>

Let us imagine the worst fears of those who oppose inclusion. Bob has been physically abusing his wife, Jane in their relationship. Jane uses a safe house to escape the situation and Bob finds out from a friend which safe house. He has heard of a new law which means he could get into the safe house if he dresses up as a woman. So, he dresses up as a woman and approaches the safe house, saying his partner has been abusing him and he is a trans woman. The safe house looks into his records and finds:

- (1) Bob is financially well-off and could afford to pay for his accommodation. There are other women needing the service who cannot afford to pay for accommodation, so Bob is of low priority.
- (2) Bob's name appears on Jane's record as her abuser. The safe house knows they cannot be housed together, and Bob is likely to be a threat to other women.
- (3) Bob's Police check comes back, and they find he has been arrested twice for domestic assault in the last year.

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<sup>139</sup> Stonewall and nfpSyngery Report, above n 4 at 15.

<sup>140</sup> Stonewall, above n 4 at 2.

The safe house chooses to deny Bob the service because he is not in financial need and is likely to pose a risk to the women using the service, particularly Jane. They may alternatively help him to access a different service or house him separately from other service users.

This is simply an example of the kinds of risk assessment procedures which may be used by safe house services. In this example it becomes clear that Bob's ruse would not succeed due to the robust nature of safe house risk assessment procedures.

Alongside the existing risk assessment procedures, implementation of inclusive policies is crucial. It is not enough to simply have inclusive policies, they must be advertised to the people they concern. Staff must know about them and be trained to apply them. The policy should be visible and searchable for people wanting to access the service.

Trans survivors of IPV have been through enough, and they should not need to be hesitant about whether a service is inclusive to them or not. They should know, with the same certainty as anyone else, that there is a service there to support them and keep them safe.

### *V Application in Aotearoa New Zealand*

While the laws and policies of trans inclusion in women-only services are clear, it is important to also understand the realities of their application within the Aotearoa New Zealand context. Overseas, there has been extensive consultation with safe houses and IPV services about their trans-inclusive policies and how they work in reality. A similar study has not been conducted in Aotearoa New Zealand, perhaps because overseas studies were largely triggered by law reform discussions, which have been stalled in Aotearoa New Zealand. For this paper, I have emailed a range of safe houses and women-only services across Aotearoa New Zealand to inquire as to their trans-inclusive policies. I could not find any easily accessible information for any of the shelters as to their inclusion policy. This survey was by no means formal and many of the contacted services did not respond. It was simply used to gain policy information which could not be found anywhere else.

Before responses may be analysed, it is important to note how different shelters in Aotearoa New Zealand relate to each other. Most of our safe houses come under the umbrella of the National Collective of Independent Women's Refuges (NCIWR, otherwise known as Women's Refuge). 38 safe houses are affiliated with NCIWR and about 20 are unaffiliated.<sup>141</sup> All safe houses are non-profit registered charities managed by a trust, and they are not completely funded by the government. NCIWR itself is only 60% funded.<sup>142</sup> The politics of safe houses in Aotearoa New Zealand are not within the scope of this essay, but there is some competition and disagreement between affiliated and non-affiliated organisations.

NCIWR replied to my email by saying:<sup>143</sup>

In answer to your question we are all inclusive here at women's refuge we welcome all women into our safe houses – including transgender women.

Waitomo Women's Refuge (NCIWR affiliated), answered:<sup>144</sup>

At our Refuge if you identify as a woman and meet our other criteria then you can be admitted to our safehouse. This includes transgender women.

They also added, if it is not appropriate to admit a woman to their safe house, then they will find an alternative solution such as WINZ emergency accommodation, a different safe house, or a motel.<sup>145</sup>

Wellington Women's Refuge (NCIWR affiliated), sent me a copy of their relevant policy.<sup>146</sup>

WWR understand that gender identity can be non-binary and is open to providing services to cis women, transgender, gender queer, intersex or people who choose to live with a more fluid gender identity.

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141 "How Women's Refuges in NZ Operate – and Why Your Local Refuge Needs Your Support" (1 August 2017) The Aunties <<https://www.aunties.co.nz/2017/08/01/how-womens-refuges-in-nz-operate-and-why-your-local-refuge-needs-your-support/>>; Email from Phillipa, above n 1.

142 The Aunties, above n 142.

143 Email from Casey (National Collective of Independent Women's Refuges) to the author regarding this paper (28 May 2021).

144 Email from Wendy (Waitomo Waipa Women's Refuge) to the author regarding this paper (1 June 2021).

145 Email from Wendy, above n 145.

146 Email from Phillipa, above n 1.

They added that most safe houses have been supporting all who identify as women for many years. Their representative also noted, “legislation could be overkill and an unusual approach towards a not-for-profit charitable social service” since they are already working hard to ensure inclusivity within NCIWR safe houses.<sup>147</sup>

The Aunties, a non-safe house IPV service, noted over the phone that organisations independent from NCIWR tend to have more freedom to develop their own inclusive policies. Their representative also noted that the safe house system in general was designed for cis Pākehā women, and this is reflected in policies and their implementation.<sup>148</sup>

YWCA Christchurch (unaffiliated) has a slightly different approach to NCIWR. They said they will not include trans women in shared accommodation, because of privacy concerns, and that “it tends to lead to problems.” Instead, they will house them separately in a whole unit if one is available.<sup>149</sup> This reflects the influence of those who oppose inclusion based on cisgender discomfort and privacy concerns, as is earlier outlined in this paper.

Tauranga Women’s Refuge (unaffiliated) affirmed they have been providing safe housing for trans women for years.<sup>150</sup> Camellia House (unaffiliated) in Palmerston North has been providing accommodation for trans women for years and has recently developed a formal gender policy for the purposes of affirming this. I was involved in writing this policy, which initially sparked the idea for this paper.<sup>151</sup>

Women’s Centre New Plymouth, an unaffiliated non-safe house service, is also in the process of developing a gender policy at the moment. They have always operated on “social inclusion with no judgment” and are currently developing policy which affirms their status quo.<sup>152</sup>

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147 Email from Phillipa, above n 1.

148 Phone call from Jackie (The Aunties) to the author regarding this paper (21 May 2021).

149 Email from Unknown (YWCA Christchurch) to the author regarding this paper (2 June 2021).

150 Email from Hazel (Tauranga Women’s Refuge) to the author regarding this paper (27 May 2021).

151 I worked with Camellia House through my position as a Summer Clerk at Cooper Rapley Law in Palmerston North from 2020-2021.

152 Email from Angela (New Plymouth Women’s Centre) to the author regarding this paper (10 June 2021).

From this brief survey, it seems that safe houses in Aotearoa New Zealand generally affirm the status of trans women as women and include them in their services. However, there is always more that can be done, should it be within the resources of the relevant service. From this fairly informal survey, I suggest that safe houses and IPV services in Aotearoa New Zealand should focus on implementing their inclusive policies in practice. It is amazing to see that most services are welcoming to trans women, and it would be better if this was publicly visible to trans women themselves, as every service needed to be emailed to access this information.

As stated earlier in this paper, there are many different ways to implement inclusive policies, and most of them cost very few resources. The most important of these implementation mechanisms is working with trans and Rainbow advocacy services to ask what they actually want and need from an IPV service.

## *VI Conclusions*

Trans inclusion should be encouraged and implemented in safe houses and IPV services. While the law in Aotearoa New Zealand is not particularly friendly to trans individuals, safe houses have largely taken matters into their own hands to ensure inclusion within the IPV sector. Hopefully the planned legal reform, which appears inevitable, will provide a stronger legal mandate to support the current status quo.

It is gratifying to see that trans exclusionary myths and arguments have not significantly impacted the IPV sector in Aotearoa New Zealand. However, there is always more that safe houses in Aotearoa New Zealand could do to implement their inclusive policies. Safe houses strive to make their users feel safe, supported and welcome. This can best be done preemptively by connecting with trans and Rainbow communities to enhance their feeling of inclusion. An example of this could be involving trans people in development of policies and procedures. Laws are nothing if they are not followed, and policies are nothing if they are not implemented.

I also argue that the planned legal reform will be useful within the IPV sector, because it would provide a guarantee of anti-discrimination and remove discretion from individuals

who may apply their own prejudices. Safe houses and IPV services do great work for women, including trans women. Legal reform would not change what most services do on a daily basis, but it would change things for the minority who continue to apply exclusive practices.

I conclude that the status quo of trans inclusion in women-only services in Aotearoa New Zealand such as safe houses and IPV services should be affirmed by legal reform, and services should focus their energy on implementing their already inclusive policies.

Trans survivors of IPV should know with certainty, the same as every other survivor, that there are services available to support them should they need it. If they need to access an IPV service, they should know they will be welcomed and supported from the moment they enter the door.

Trans women are a marginalised and vulnerable group, whose interests have been absent from public consideration for far too long. It is time for us to take a look at ourselves and our society and question what we can do better, because we can do better. We should ask how our current services and women-only spaces are cisnormative, and what we may do to displace this normative assumption. There is so much more that we could be doing, with minimal effort and resources. All we need to do is open our minds to the fact that our current system is not perfect.

### Word count

The text of this paper (excluding table of contents, footnotes, and bibliography) comprises approximately 8,000 words.



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