

**IN CONFIDENCE**

**GOVERNMENT RESPONSE TO  
TE AKA MATUA O TE TURE |  
LAW COMMISSION REPORT ON  
PROTECTIONS IN THE HUMAN  
RIGHTS ACT 1993**

**Presented to the House of Representatives**

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## GOVERNMENT RESPONSE TO LAW COMMISSION REPORT ON PROTECTIONS IN THE HUMAN RIGHTS ACT 1993

### Introduction

- 1 The government has carefully considered the Law Commission's report *la Tangata: Protections in the Human Rights Act 1993 for people who are transgender, people who are non-binary and people with innate variations of sex characteristics (NZLC R150)*. The Government responds to the report in accordance with Cabinet Office Circular CO (09) 1.

### The Human Rights Act 1993

- 2 The Human Rights Act 1993 (the HRA) prohibits discrimination based on several grounds such as race, nationality, age and sex. However, there is currently no explicit protection in the HRA for people who are transgender or non-binary and people with innate variations of sex characteristics. Government agencies and the Human Rights Commission interpret 'sex' as including that protection but this has never been tested in the Courts.
- 3 The HRA applies differently for the private sector than it does to the state sector. State sector entities need to consider whether their actions limit the right to be free from discrimination in section 19 of the New Zealand Bill of Rights Act 1990 and, if so, whether the discrimination can be justified under section 5 of that Act.
- 4 In the private sector, Part 2 of the HRA makes discrimination based on the prohibited grounds of discrimination unlawful in specified areas (e.g., employment, education or provision of services or facilities) unless an exception applies. The exceptions are intended to ensure an appropriate balance of rights and interests.

### The Law Commission's review

- 5 In 2022, the then Minister of Justice asked the Law Commission (the Commission) to review the protections in the HRA for people who are transgender or non-binary and people with innate variations of sex characteristics.
- 6 The Commission followed a thorough process to review the law and develop its report. This included research for, and analysis of, complex and controversial questions and the release of an issues paper which sought public submissions. The Commission also considered feedback from face-to-face consultation with various groups interested in the work.
- 7 The Commission's report was presented to the House of Representatives on 4 September 2025. The report makes 27 recommendations for reform.

- 8 The report's central recommendation is to add two prohibited grounds of discrimination to the HRA, which are:
- 8.1 gender identity or its equivalents in the cultures of the person, and
  - 8.2 having an innate variation of sex characteristics.
- 9 The Commission refers to the high levels of historical and contemporary discrimination experienced by people in these groups as one rationale for explicitly extending the protections afforded by the HRA. The Commission also refers to the approaches taken in comparable countries and international law as further justification.
- 10 The Commission notes that, although it is possible that people in these groups are already protected under the prohibited ground of sex, the extent and nature of that protection is unclear. As such, it is also unclear how the exceptions in the HRA should apply when, for example, a transgender person wants to access facilities or services that align with their gender identity.
- 11 The Commission considers the current law's legal ambiguity does not just affect those who need protection from discrimination, but also people and organisations who have obligations under the HRA such as landlords, business owners and employers.
- 12 The Commission notes that clarifying the prohibited grounds of discrimination would also require clarifying the 19 exceptions which allow, in prescribed circumstances, discrimination based on sex in the private sector. For each exception, the report recommends whether the exception should also apply to the additional grounds, or whether a different approach is warranted.
- 13 The Commission makes three other recommendations relating to gender-neutral language, the scope of a provision allowing preferential treatment based on pregnancy and childbirth, and a consequential amendment to the Employment Relations Act 2000.

### **Government response**

- 14 The Government recognises the significant role that the Human Rights Act 1993 plays in ensuring that New Zealanders can live free from discrimination, a fundamental right affirmed by the New Zealand Bill of Rights Act 1990. The HRA seeks to uphold this right while also balancing it against other legitimate rights, interests and concerns of New Zealanders.
- 15 The Government thanks the Commission for its thorough work in reviewing the protections in the HRA for people who are transgender, people who are non-binary and people with innate variations of sex characteristics.
- 16 The Government acknowledges the Commission's findings and recommendations. As the Government currently has significant commitments and priorities in the Justice portfolio, progressing the Commission's recommendations is not a priority at this time.