

Pūrongo | Report 150

Ia 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**

Recommendations



CHAPTER 4: THE CORE CASE FOR REFORM

- R1** Section 21 of the Human Rights Act 1993 should be amended to clarify that the Human Rights Act covers discrimination that is due to being transgender or non-binary or having an innate variation of sex characteristics.

CHAPTER 7: WORDING OF NEW GROUNDS

- R2** Section 21 of the Human Rights Act 1993 should be amended to add a new ground of ‘gender identity or its equivalents in the cultures of the person’. The ground should be defined to include:
- a. gender expression; and
 - b. the relationship between a person’s gender identity and their sex assigned at birth.
- R3** Section 21 of the Human Rights Act 1993 should be amended to add a new ground of ‘having an innate variation of sex characteristics’.

CHAPTER 9: EMPLOYMENT

R4 Section 26 of the Human Rights Act 1993 should be amended to allow differences of treatment based on the new ground of gender identity.

R5 Section 27(1) of the Human Rights Act 1993 should be amended to allow differences of treatment based on the new grounds of gender identity and having an innate variation of sex characteristics.

R6 Section 27(2) of the Human Rights Act 1993 should be amended to allow differences of treatment based on the new grounds of gender identity and having an innate variation of sex characteristics.

R7 Section 27(3)(a) of the Human Rights Act 1993 should be amended to allow differences of treatment based on the new ground of gender identity.

R8 Sections 28(1) and 39(1) of the Human Rights Act 1993 should be amended to allow differences of treatment based on the new grounds of gender identity and having an innate variation of sex characteristics.

CHAPTER 10: GOODS, SERVICES, FACILITIES, PLACES AND VEHICLES

R9 Section 47 of the Human Rights Act 1993 should be redrafted to specify that a person does not commit a breach of section 44 by reason of the grounds of sex, gender identity or having an innate variation of sex characteristics if:

- a. the nature of a skill varies according to whether a customer or client has particular physical characteristics; and
- b. the person exercises the skill in relation to particular physical characteristics only in accordance with their normal practice.

R10 Section 48(1) of the Human Rights Act 1993 should be amended to allow differences of treatment based on the new grounds of gender identity and having an innate variation of sex characteristics.

R11 Section 70(2) of the Human Rights Act 1993 should be amended to allow differences of treatment based on the new grounds of gender identity and having an innate variation of sex characteristics.

CHAPTER 11: LAND, HOUSING AND ACCOMMODATION

R12 The Human Rights Act 1993 should be amended to specify that the sex exception in section 55 of the Human Rights Act does not permit the different treatment of a person whose gender identity aligns with the sex for which accommodation is being provided unless that is reasonably required to preserve the privacy or to protect the welfare of any occupant or potential occupant of the accommodation.

R13 The Human Rights Act 1993 should be amended to specify that the exception in section 27(3)(b) of the Human Rights Act does not permit the different treatment of a person whose gender identity aligns with the sex for which accommodation is being provided unless that is reasonably required to preserve the privacy of any occupant or potential occupant of the accommodation.

R14 Section 27(5) of the Human Rights Act 1993 should be amended to allow differences of treatment based on the new ground of gender identity.

CHAPTER 12: EDUCATION

- R15** Section 58 of the Human Rights Act 1993 should be amended to specify that section 58(1) does not entitle an educational establishment maintained wholly or principally for students of one sex to refuse to admit a student whose gender identity aligns with that sex.

CHAPTER 13: COURSES AND COUNSELLING

- R16** Section 27(4) of the Human Rights Act 1993 should be amended to allow differences of treatment based on the new ground of gender identity.
- R17** Section 45 of the Human Rights Act 1993 should be amended to allow the holding of courses or the provision of counselling to be restricted to persons of a particular gender identity where highly personal matters are involved and where it is reasonably required to achieve the purposes of the course or counselling.
- R18** Section 59 of the Human Rights Act 1993 should be amended to allow the holding of courses or the provision of counselling to be restricted to persons of a particular gender identity where highly personal matters are involved and where it is reasonably required to achieve the purposes of the course or counselling.

CHAPTER 14: SINGLE-SEX FACILITIES

R19 Section 43 of the Human Rights Act 1993 should be amended to specify that section 43(1) cannot be relied on to refuse a person access to or use of a single-sex facility that aligns with their gender identity.

R20 Section 46 of the Human Rights Act 1993 should be amended to specify that it cannot be relied on to refuse a person access to or use of a single-sex facility or service that aligns with their gender identity.

R21 Recommendations 19 and 20 should not apply to circumstances covered by Recommendation 12 relating to shared accommodation.

R22 There should be new exceptions to sections 42 and 44 of the Human Rights Act 1993 that operate in the same circumstances outlined in relation to Recommendation 12.

CHAPTER 15: COMPETITIVE SPORTS

R23 The Human Rights Act 1993 should be amended to specify that sports organisations cannot rely on section 49(1) of the Human Rights Act 1993 to treat a person differently by reason of gender identity or having an innate variation of sex characteristics in relation to a single-sex competitive sporting activity that aligns with their gender identity except to the extent that is reasonably required to:

- a. secure fair competition between participants having regard to the level of the competition and the public interest in broad community participation in sporting activities; or
- b. ensure the physical safety of all participants; or
- c. comply with an international rule that imposes a requirement in relation to the particular competitive sporting activity.

R24 This new provision should clarify that, except in these circumstances, section 49(1) does not permit a person to be excluded from a single-sex competitive sporting activity if the person's gender identity aligns with that sex.

CHAPTER 19: IMPLICATIONS FOR OTHER LAWS

- R25** Section 105 of the Employment Relations Act 2000 should be amended to address the internal inconsistencies that result from adding new grounds to section 21 of the Human Rights Act 1993 (Recommendations 1 to 3).

CHAPTER 20: OTHER MATTERS

- R26** Male and female gendered pronouns “him or her”, “his or her” or “he or she” in the Human Rights Act 1993 should be replaced with gender-neutral language.
- R27** Section 74 of the Human Rights Act 1993 should be amended to clarify that it applies to anyone who is pregnant or who is giving birth.
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