



Women's Rights Party  
Aotearoa | New Zealand

27 August 2024

**Submission in response to Te Aka Matua o te Ture | The Law Commission Issues Paper #53: Ia Tangata: A review of the 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**

To:

Claudia Geiringer  
Commissioner  
Te Aka Matua o te Ture | Law Commission

## **Introduction to the Women's Rights Party**

Thank you for the opportunity to make a submission on the Law Commission Issues Paper #53 following the consultation with the Women's Rights Party on 15 August. The submission that follows comprises the presentations of Women's Rights Party members to Law Commission members with amendments and additions elaborating on points that were summarised due to time constraints.

The Women's Rights Party of Aotearoa New Zealand is a registered political party focused on issues that directly impact women, girls, and children. We are about protecting the rights of women and children. We advocate for women's sex-based rights, so that these rights are respected and extended, and not eroded.

Our Policy Platform spells out our position in relation to women's sex-based rights.<sup>1</sup>

- The sex-based rights for women guaranteed in the *Human Rights Act 1993*<sup>2</sup> must be respected in law and policy, such as the right to single-sex spaces.
- The Women's Rights Party is committed to the rights of lesbians to organise and socialise separately where they wish, recognising that lesbianism is same-sex attraction, not same-gender attraction.
- Biological males should not compete in women's and girl's sports, where there are issues of fairness and safety.

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<sup>1</sup> Women's Rights Party Policy can be downloaded here: <https://womensrightsparty.nz/policy/p2>

<sup>2</sup> Human Rights Act 1993

<https://www.legislation.govt.nz/act/public/1993/0082/latest/DLM304212.html>

- The language in policy, law, health, and education needs to recognise that sexual orientation is about the attraction that a person can have either to their own sex, the other sex, or both sexes.

We have around 800 members, many of whom are active in other groups that have also submitted on the Issues Paper such as Mana Wāhine Kōrero, Speak Up for Women, Resist Gender Education, LAVA (Lesbian Action for Visibility Aotearoa), Save Women's Sports, and FOWL (Feminists Older Women's Lobbyists). Each of these groups contributes its own perspectives to the Law Commission, as does the Women's Rights Party.

The Women's Rights Party contested the 2023 General Election with a List of 12 exceptional women from all walks of life across Aotearoa New Zealand raising issues that included women's sex-based rights, women's healthcare and wellbeing, our children's education, and the irreversible harm being done to our young people experiencing gender distress through medical interventions.

The Women's Rights Party honours the women of Aotearoa New Zealand, who won the right to vote in 1893, the first self-governing nation in the world to legislate women's suffrage. We were formed in April 2023, 130 years after the women's suffrage legislation, out of a concern for the erosion of the rights of women and girls and concerns about the safeguarding of children.

Many Women's Rights Party members have been instrumental in advocating for women's sex-based rights since the 1960s and 1970s within the women's movement, gay rights movement, and their unions. In 1981 the Federation of Labour and the Labour Party adopted the Working Women's Charter, which had as its one of its core principles "the elimination of discrimination on the basis of sex, race, marital or parental status, sexuality or age".<sup>3</sup>

A number of members contributed to the Law Commission consultation and written submission. Each contributed from her own expertise and experience. We have incorporated the policies of the Women's Rights Party which reaffirm women's and girls' sex-based rights, and challenge the discrimination we are currently experiencing from the replacement of the category of 'sex' with that of 'gender identity', an imprecise concept that refers to sex-based stereotypes and social expectations; e.g. what is considered feminine and masculine.

The Women's Rights Party is a signatory to the Women's Declaration International, (WDI) which will be making its own submission on behalf of WDI New Zealand.<sup>4</sup>

### **The submission process**

Under the heading "Have Your Say", the Law Commission states it is not the Commission's intention to count up the options with which most people agree. We disagree with this position, as the proposal to put 'gender' and 'gender-identity' into the Human Rights Act affects **ALL** New Zealanders, not only those capable of making a presentation deemed acceptable by the Law Commission.

We find it undemocratic that the Law Commission is not giving stronger weight to the option with which most people agree. Many are unable to express themselves in a clear and articulate manner. Nor does everyone have a laptop, computer, or printer on which to read or print the 211-page IP 53, or even the 21-page summary. Many people only have mobile phones on which to read the review and make a submission.

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<sup>3</sup> <https://teara.govt.nz/en/document/26389/working-womens-charter>

<sup>4</sup> *Declaration on Women's Sex-based Rights*. <https://www.womensdeclaration.com/en/>

Multiple factors can restrict what people say and how they say it, not the least of which is fear of consequences in their employment for speaking out. This is why those speaking publicly about the threats to women's rights from gender ideology are likely to be retired. We think it is important for everyone to have a say. The majority opinion does matter.

### **See recommendation 1.**

The Law Commission states it does not have the capacity to conduct a survey. "It is not our intention to count up submissions to find the option with which most people agree." Yet the Issues Paper relies heavily in its evidence of discrimination against 'transgender and non-binary people' on the 2019 Waikato University Transgender Health Research Lab *Counting Ourselves*, a self-selected online survey that cannot be verified against a control group.<sup>5</sup> The survey is used to justify claims of widespread discrimination against trans and non-binary people (more on this in our response to **Chapter 3**).

Two polls conducted by leading New Zealand research agencies during the New Zealand General Election campaign showed that a majority of New Zealanders oppose biological men accessing women's spaces (50 percent opposed compared with 21 percent in favour in the Talbot Mills Poll, with the rest neutral or unsure).<sup>6</sup>

In response to a question, "Should Councils allow men into women's spaces without consultation", the Curia Poll reported 58 percent of women said "No" with opposition strongest in provincial and rural New Zealand (62 percent - 65 percent) and those aged over 60 (63 percent).

Yet single-sex toilets, and changing rooms are being removed in schools and tertiary institutions, restaurants and clubs, and public facilities such as swimming pools. If any male can identify into women's and girl's spaces, these spaces can no longer be considered "protected spaces". Males self-identifying as females and entering women-only spaces effectively eliminate the sex-based rights of women and girls.

The most strongly opposed of all the issues canvassed in the Talbot Mills survey was the opposition to men competing in women's sports (60 percent opposed compared with 14 percent in favour, with the rest neutral or unsure).

The Law Commission acknowledges those people and organisations that shared their experiences and perspectives in informing the Issues Paper. We note that no individuals or organisations were asked to share the views and perspectives of women whose sex-based rights are most at risk with the introduction of 'gender identity' into the HRA.

### **See Recommendation 2.**

We note also that the Issues Paper does not consider the discrimination experienced by "de-transitioners", often at the hands of the trans community. This likely reflects the fact that the Expert Advisory Committee did not have any member who has de-transitioned. We see this as a significant weakness as international studies show as many as 72 percent of females detransition within five years (50 percent for males).<sup>7</sup>

### **See Recommendation 3.**

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<sup>5</sup> *Transgender Health Research Lab p3 Executive Summary*. <https://countingourselves.nz/wp-content/uploads/2022/09/FINAL-version-paper-survey.pdf>

<sup>6</sup> Curia Poll, August 2023; <https://womensrightsparty.nz/wp-content/uploads/2023/09/Curia-Womens-Rights-Issues-Poll-Results-Sep-2023.pdf> Talbot Mills Poll, November 2023; <https://newsroom.co.nz/2023/11/03/race-relations-among-most-divisive-issues-in-election-poll>

<sup>7</sup> Bachmann, C., Golub, J., Holstiege, J., and Hoffmann, F. (2024) 'Gender identity disorders among young people in Germany: Prevalence and trends, 2013-2022. An analysis of nationwide routine insurance data'. *Deutsches Ärzteblatt*, 31.05.2024. <https://www.aerzteblatt.de/int/archive/article?id=239563>.

## Introduction (Chapter 1)

The purpose of the Human Rights Act 1993 (HRA)<sup>8</sup> was to improve protections for human rights in Aotearoa New Zealand and to provide general accordance with UN Covenants and Conventions.

'Sex' is the first prohibited ground of discrimination in the HRA. The legislation clearly intended to protect people on the basis of their sex, and so our discussion centres around the intended meaning of the word in the HRA and therefore the intended protections afforded on the basis of a person's sex.

The meaning of the word 'sex' has been well established through customary use in the English language over hundreds of years, to describe the two biological sexes - male and female. It is a primordial category of human, well understood by all cultures in the world; each culture having their own words that describe 'male' and 'female'.

The word 'sex' is also used as a scientific category to distinguish the two sexes - male from female. Sex in this sense is based on the reproductive strategy of a species. In humans and other anisogamous species, males produce small motile gametes and females produce large immotile gametes. Sex in humans is therefore determined by the type of gametes a person produces, or is expected to produce.

In males, the presence of a 'Y' chromosome/SRY gene establishes the male sex category. If a functioning SRY gene is present and able to be activated, a complex set of gene cascades are deployed, resulting in male development and small gamete production. Conversely, the absence of a functioning SRY gene predicts female development.

The sex categories of male and female are based on a well-organised body of science and accurately describe phenomenon in the real world.

Citing chromosomal differences and the downstream effects of development such as natural variation in hormones and neurobiology as evidence that sex is a spectrum is unfortunately a common mistake that has even been found in recent peer reviewed scientific literature. Such errors conflate the way various sex markers are expressed in individuals with what sex they in fact are.

Additionally, the view that it is gender identity, not sex, that determines whether a person is male or female, is not falsifiable. Falsifiability is an important concept in the philosophy of science. For a hypothesis to be scientifically valid, it must be testable and able to be disproven by evidence if it is incorrect. An innate sense of one's own gender is not accessible or measurable to external observers.

Therefore, our customary use of the word sex and our scientific application of the word sex, both describe biological reality.

The words 'woman' and 'girl' have also been long established through customary use, to mean a person of female sex, either an adult human female in the case of a woman, or a juvenile human female in the case of a girl. Again, the meaning is well understood throughout all human cultures.

Therefore, we argue that to stretch the meaning of the word 'sex' to extend beyond fact and reality, is to utterly disregard the sex-based protections originally intended by the HRA legislation.

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<sup>8</sup> *Human Rights Act 1993.*

<https://www.legislation.govt.nz/act/public/1993/0082/latest/DLM304212.html>

To redefine the word 'sex' to allow males to "identify" themselves out of their biological sex and into the protected female sex category will collapse all the provisions in the HRA that were originally intended to provide protection for women and girls from male predatory behaviour, violence, patriarchal subjugation and inequality.

### Examples of HRA sex-based protections include:

**s46** ... the right to maintain separate facilities for each sex based on decency and safety

**s70** ... the right to exclude males from female sporting categories

**s73** ... the right to female-only organisations working for the advancement of equality, such as professional, educational or political groups.

The word 'gender', in contrast to the word 'sex', does not describe a scientific physical reality and nor is the meaning well defined in customary use, except where it has been used as an alternative word for 'sex'. Some attribute this to a puritanical aversion to the word 'sex' as alluding to sexual activity.

Prior to 2021 when the Births, Deaths, Marriages and Relationships Registration Act (BDMRRA) was amended<sup>9</sup> and the following year with the Conversion Practices Prohibition Legislation Act<sup>10</sup>, there was no reference to 'gender' in New Zealand law. For example, the Equal Pay Act 1972<sup>11</sup> and its amendments in 2020 do not mention 'gender'. The Equal Pay Act references only sex-based discrimination in relation to pay.

As we show later in our response to **Chapter 2**, the two words are not synonymous.

The phrase "gender identity" is currently being used to describe an idea or a belief about oneself. We argue that the introduction of such words into the HRA will cause obfuscation and confusion in the application of the protections for women and girls.

Whether obfuscation or confusion is intended or not, the outcome for the protection of females will be the same. Women and girls will lose their sex-segregated protections as males seek to identify into the female category using phrases such as "my gender identity is a woman".

"Transwomen are women" is a mantra of those allied to the transgender cause. This is a relatively new concept. Historically transvestites or transexuals, as they were called, knew they were men. We note that gender surgery is merely cosmetic; it does not change the biological sex of a person. The belief that a man can transcend his anatomical sex and identify himself into another sex (or no sex), relies on the belief that a metaphysical entity (such as a 'gender identity') exists *separate* from the human body.

Christianity also relies on the belief of a metaphysical entity (the human soul) – a soul may also transcend the human body. However, a metaphysical entity, like a soul or gender identity, cannot be proven by objective studies of physical reality, and therefore neither have a place as a separate category in our Human Rights Act.

The HRA and the New Zealand Bill of Rights Act 1990 (Bill of Rights)<sup>12</sup> protects a person's right to hold and freely express beliefs. However, neither of these laws then extend to

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<sup>9</sup> *Births, Deaths, Marriages and Relationships Registration Act 2021*.

<https://www.legislation.govt.nz/act/public/2021/0057/latest/whole.html>

<sup>10</sup> *Conversion Practices Prohibition Legislation*

<https://www.legislation.govt.nz/act/public/2022/0001/latest/LMS487215.html>

<sup>11</sup> *Equal Pay Act 1972 and Equal Pay Amendment Act 2020*.

<https://www.legislation.govt.nz/act/public/2020/0045/latest/LMS86440.html>

<sup>12</sup> *New Zealand Bill of Rights Act 1990 No 109 (as at 30 August 2022), Public Act Contents - New Zealand Legislation*. <https://www.legislation.govt.nz/act/public/2021/0057/latest/whole.html>

protect elements of a belief which are metaphysical. Laws need to be based on physical reality if they are to have any place in our reality-based liberal democracy. The law should remain secular – it should not become connected to what amounts as a belief system.

We reject the idea that ‘gender identity’ is a widely held accepted value or concept in our society.

A poll commissioned by Family First in August 2023 showed that 76% of the respondents oppose teaching children they can choose a gender.<sup>13</sup>

A poll commissioned by Speak Up For Women in June 2023 found that 56% of respondents did not support the introduction of sex self-ID in law, a change that was supported by all political parties in Parliament in 2021. Only 20% supported the change, while 24% were unsure.<sup>14</sup>

A Family First petition supporting the inclusion into New Zealand legislation of a biological definition for the two sexes – male and female – gained more than 23,500 signatures and was delivered to Parliament in August 2024.<sup>15</sup>

We also refer you to a survey conducted in the UK by Women’s Rights Network – which calls for the NHS to take action to ensure single sex wards, to reduce the alarming number of sexual assaults and rapes occurring in UK hospitals.<sup>16</sup> Between January 2019 and October 2022 there were 6,539 sexual assaults and rapes – 33 a week.

Later in this submission we provide examples from some of our members’ experiences where women’s safety in our health facilities is being highly compromised by an erosion of single-sex spaces.

The Women’s Rights Party continues to have concerns about sex self-identification on birth certificates. We opposed this law change at the time it was introduced because sex self-ID impacts on the dignity and safety of all women and girls in encouraging a belief that a man can change his sex at will and enter women’s spaces without being challenged.

Options for repeal or amendments to the BDMRRA include the following:

If birth certificates include provisions for a “nominated sex”, it needs to be clear that this is the individual’s preferred sex and not biological sex. Clear and accessible records must be kept of any changes to the birth certificate, and this information must also be recorded on the certificate itself. Sex is a fundamental democratic and explanatory variable, and a powerful predictor of almost every dimension of social life, economic status, and health outcomes.

No child under 18 should have a “nominated sex” on their birth certificate, and the only permitted changes to a child’s recorded sex on the birth certificate should be if the original sex on the birth certificate was incorrect, for example, in the rare instance of a child born with a difference of sexual development (DSD or commonly known as “intersex”).

#### **See Recommendation 4.**

The inclusion of self-determined legal gender recognition in the HRA would be of particular concern to the Women’s Rights Party. We do not agree that legal gender recognition

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<sup>13</sup> <https://familyfirst.org.nz/wp-content/uploads/2023/09/Gender-Children-Schools-Poll-Results-August-2023.pdf>

<sup>14</sup> <https://www.speakupforwomen.nz/post/majority-of-new-zealanders-do-not-support-sex-self-id>

<sup>15</sup> <https://familyfirst.org.nz/2024/08/07/what-is-a-woman-23500-petition-presented-to-parliament/>

<sup>16</sup> Phoenix, J. *When we are at our most vulnerable: The sickening extent of rapes and sexual assaults in hospitals.* April 2023.

[https://www.womensrights.network/\\_files/ugd/18f02a\\_431d87ff57d24e5c9124d3109fe0d83f.pdf](https://www.womensrights.network/_files/ugd/18f02a_431d87ff57d24e5c9124d3109fe0d83f.pdf)

equates to 'legal sex', which should be the biological sex recorded on the certificate at birth and which cannot be changed by hormones, surgery, or 'internal feelings'.

Reem Alsalem, the UN Special Rapporteur on Violence Against Women and Girls, has stated that "a right to legal gender recognition does not imply a right to unregulated self-identification of gender identity without appropriate safeguarding and risk assessment".<sup>17</sup>

Sex and gender are completely different and are often confused in policy and legal documents - to the continued detriment of women. The Women's Rights Party campaigned in the General Election for greater protection of sex-based rights in the face of demands for rights based on gender identity, which we believe will inevitably conflict with hard-won women's rights.

There are provisions in the HRA that include protections for people with psychiatric, psychological and physiological conditions. It is not inconsistent to know that sex is binary and to acknowledge that people who are struggling with their identity deserve mental health support. 'Gender identity disorder' is a mental health condition; though it has now been redefined as 'gender dysphoria' as a result of trans activists in the medical professions 'de-pathologising' the condition.

Health issues are already covered under "disability" in the prohibited grounds of discrimination (**s21 (1h) (i to vii)**). There are also specific protections for those with a disability in **s29** (employment), **s52** (provision of goods and services), **s56** (housing and accommodation), **s60** (educational establishments).

A Crown Law Opinion in 2006 stated: "In some circumstances, disability may be relevant to gender identity discrimination as some transgender people are diagnosed as suffering from gender dysphoria. The definition of disability discrimination is probably wide enough to cover this as it includes a psychological disability."<sup>18</sup>

We acknowledge that not all people with body dysmorphic conditions such as anorexia or gender dysphoria, will seek mental health support or a diagnosis. However, these provisions in the Act are available if required.

Those suffering impairment to fertility or loss of sexual function due to gender hormonal medication, surgery or medical malfeasance are covered by the Health and Disability Code which allows for complaints to the Health and Disability Commission (HDC). This avenue is particularly relevant to the increasing number of 'de-transitioners', particularly young women given the preponderance of girls among so-called 'trans teens'. For these young women, the effects of taking testosterone are significant in terms of their fertility. This is irreversible, as is surgery to remove their breasts.

We note that a difference of sex development (DSD) may or may not cause distress to a person, but for those at the extreme end of pain and suffering there is nevertheless adequate protection by 'disability' as it also covers physical impairment. Those with DSDs still have a biological sex, so they also have protection under the prohibited ground of sex, i.e. male or female.

In some cases, a male born with a difference of sex development (DSD) may be incorrectly recorded as female, raised as a girl, and later found to be male with XY chromosomes and levels of testosterone well above female levels, as in the case of South African middle-

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<sup>17</sup> Response to the statement published by the Sexual Rights Initiative (SRI) on 15 February 2023, entitled SRI's statement on the Special Rapporteur on VAW, Reem Alsalem, harmful position on gender identity; [SR-VAWG-statement-response-SRI.pdf \(ohchr.org\)](#)

<sup>18</sup> <https://www.beehive.govt.nz/sites/default/files/SG%20Opinion%202%20Aug%202006.pdf>. P3

distance runner Caster Semenya.<sup>19</sup> Such anomalies are likely more common in places in the world without the maternity care we have in NZ. While we condemn the leaking of Semenya's medical records and subsequent media firestorm, we do not agree that those who have the natural advantage of male puberty are eligible to compete in women's sports, especially those sports involving explosive power, as this is not only unfair, it is dangerous for the other competitors.

### **See Recommendation 5.**

In summary, the Women's Rights Party opposes the inclusion of "gender identity and gender expression" as a protected ground for discrimination in the Human Rights Act 1993.<sup>20</sup> We will show that 'gender' refers to socially constructed behaviours that society expects from one or other biological sex, which often perpetuate inequalities between the sexes, noting that these expectations are not enduring (they change over time) and they vary across cultures.

Adding 'gender identity' to the grounds for unlawful discrimination could undermine the exceptions based on sex in Part 2 of the HRA. The question of whose rights would take precedence (i.e. women's sex-based rights, or new rights protecting men claiming identity as women) would inevitably have to be decided in a Court of Law.

### **See Recommendation 6.**

## **Gender and Sex Characteristics (Chapter 2)**

The Women's Rights Party is committed to ensuring that New Zealand legislation reflects the New Zealand Government's commitment to the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW).

It is crucial that the Law Commission pays serious attention to CEDAW, which it has not done in its issues paper. CEDAW is international law that New Zealand is obliged to abide by. The sex provisions of the Human Rights Act were written in order to comply with CEDAW.<sup>21</sup>

### **See Recommendation 7.**

Any changes to the law which reduced or removed the protections on the grounds of sex, both the anti-discrimination provisions and the exceptions where discrimination is permitted on the grounds of safety, dignity and privacy, would be in breach of CEDAW.

Giving legal status to concepts of 'gender' and including them in the HRA would risk doing just that.

The articles in CEDAW aim to eliminate discrimination against women and to facilitate the equality of women as a sex. The HRA, by forbidding discrimination on the grounds of sex, complies with this. We include excerpts from a recent letter the Women's Rights Party and the Women's Declaration International wrote to the CEDAW Committee.<sup>22</sup>

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<sup>19</sup> <https://www.theguardian.com/sport/2023/oct/28/athlete-caster-semenya-interview-im-a-woman-im-a-different-woman>

<sup>20</sup> <https://womensrightsparty.nz/policy/p4>

<sup>21</sup> <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>

<sup>22</sup> [https://womensdeclaration.com/documents/400/WDI\\_WRP\\_NZ\\_final\\_RESPONSE\\_Prof\\_Hackers\\_Questions\\_.pdf](https://womensdeclaration.com/documents/400/WDI_WRP_NZ_final_RESPONSE_Prof_Hackers_Questions_.pdf)



## CEDAW and UN Definitions of Women, Sex and Gender

CEDAW makes it clear that the women's rights it protects are sex-based and that women are subjected to discrimination from society on account of their sex.

### Article 1 states:

"For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made **on the basis of sex** which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, **on a basis of equality** of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."<sup>23</sup>

### Article 5 states:

"States Parties shall take all appropriate measures: (a) To modify the **social and cultural patterns** of conduct of men and women, with a view to achieving the **elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.**"

The term 'gender' is not in CEDAW. When it appears in UN documents, the term 'gender' refers to these "social and cultural patterns" and sex-based stereotypes.

A United Nations definition of 'gender' is:

"**Gender** refers to **socially constructed differences** in attributes and opportunities associated with being female or male and to the **social interactions and relations** between women and men. Gender determines what is expected, allowed and valued in a woman or a man in a given context. In most societies, there are differences and **inequalities** between women and men in roles and responsibilities assigned, activities undertaken and access to and control over resources, as well as in decision-making opportunities. These differences and **inequalities** between the sexes are shaped by the history of **social relations** and change over time and across cultures."<sup>24</sup>

From this UN definition, it is clear that 'gender' refers to socially constructed behaviours that society expects from one or other biological sex, which often perpetuate inequalities between the sexes, noting that these expectations are not enduring (they change over time) and they vary across cultures.

Article 5 of CEDAW says that socially constructed behaviours can perpetuate harmful stereotypes based upon the social inferiority of women. It states that these stereotypical roles should be **eliminated**. Gender is not described as "inherent" or as a "human right" that should be encouraged or built into law.

### General Recommendation 28 from the CEDAW Committee in 2010 states:

"Although the Convention only refers to sex-based discrimination, interpreting article 1 together with articles 2 (f) and 5 (a) indicates that the Convention covers gender-based discrimination against women."

"The term "sex" here refers to biological differences between men and women. The term "gender" refers to socially constructed identities, attributes and roles for women and men and society's social and cultural meaning for these biological differences resulting in hierarchical relationships between women and men and in the distribution of power and

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<sup>23</sup> <https://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>

<sup>24</sup> <https://unstats.un.org/wiki/display/genderstatmanual/Glossary+of+terms>

rights favouring men and disadvantaging women. This social positioning of women and men is affected by political, economic, cultural, social, religious, ideological and environmental factors and can be changed by culture, society and community.”<sup>25</sup>

### Important points to note:

- biological sex and gender are two different things
- gender is a social construct which imposes a hierarchy of the male sex over the female sex
- CEDAW refers to sex-based discrimination only. CEDAW covers gender-based discrimination only in the sense that ‘gender’ is the social construct which creates the discrimination against the female sex.

**Recommendation 28 of the CEDAW Committee** is not saying that ‘gender’ is an inherent feeling or right which needs to be upheld. Rather, it describes ‘gender’ as a force of oppression upon the female sex.

In the position paper on the definition of “woman” in international human rights treaties, in particular the Convention on the Elimination of All Forms of Discrimination Against Women, Reem Alsalem, explains it this way:<sup>26</sup>

“In General Recommendation No. 28, the CEDAW Committee defined “gender” as “socially constructed identities, attributes and roles for women and men and society’s social and cultural meaning for these biological differences resulting in hierarchical relationships between women and men.”

“This understanding of gender clarifies that the term ‘gender’ is not to be equated with women. It is also clear that the CEDAW Committee did not equate a person who may identify as a woman and a man with someone who is a woman or a man – the latter being defined as either biologically male or female.”

She continues: “While not addressing or defining the terms “sex” or “gender”, many foundational human rights treaties, and declarations, including CEDAW, enshrine a **prohibition of discrimination based on sex** which can only be taken to mean as referring to biological sex. In General Recommendation No. 28, the CEDAW Committee reiterated that “the objective of the Convention is the elimination of all forms of discrimination against women on the basis of sex”.

And furthermore: “Based on the above analysis of relevant international law, it is clear that sex and gender are two different concepts. However, international law does not permit any derogation to the prohibition of discrimination against women based on sex.”

**“Where tension may arise between the right to non-discrimination based on sex and non-discrimination based on gender or gender identity, international human rights law does not endorse an interpretation that allows either for derogations from the obligation to ensure non-discrimination based on sex or the subordination of this obligation not to discriminate based on sex to other rights.”**

“Such a reading is supported by the General Recommendation No. 25 of the CEDAW Committee which states that “biological as well as socially and culturally constructed differences between women and men must be taken into account.”

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<sup>25</sup> <https://www.refworld.org/legal/general/cedaw/2010/en/77255>

<sup>26</sup> <https://www.ohchr.org/sites/default/files/documents/issues/women/sr/statements/20240404-Statement-sr-vawg-cedaw-convention.pdf>

It is very important to keep the distinctions between biological sex and gender clear, as United Nations definitions do. We asked the CEDAW Committee to continue to adhere to the definitions and meanings that have been established by CEDAW, United Nations and the CEDAW Committee itself. These are essential for protecting the rights of women and girls.

Sex **IS** binary. Sex **IS** biological. These are scientific facts, not opinions. People with DSDs are one sex or another. Biological sex is for the purpose of reproduction. Nobody has both male and female ways to reproduce.

The HRA indicates that sex refers to biological sex, where it says "sex, including pregnancy and childbirth". To make this more clear, it would help to define sex more extensively, for example as in the Women's Rights Party definitions, and those of CEDAW.

### Definitions of Sex in the Women's Rights Party Policy<sup>27</sup>

- A person's "sex" refers to a person's biological sex (either male or female).
- "Sex" is a prohibited ground of discrimination in the Human Rights Act 1993, including in pregnancy and childbirth.
- "Women" and "girls" refer to human females, and the words "men" and "boys" refer to human males.
- "Human female" denotes the sex with a reproductive system typically organised to bear offspring or produce eggs, distinguished biologically by the production of gametes (ova) that can be fertilised by male gametes, and includes females whose reproductive system may be disordered in some way and those females who choose not to reproduce.
- "Mother" means female parent and "father" means male parent.
- "Sexual Orientation" is a person's attraction to the same sex, opposite sex, or both.

See Recommendation 8.

### Responses to the Issues Paper on the concept of gender

**2.9** The relationship between 'sex' and 'gender' is important for understanding 'gender'. 'Gender identity and expression' have no meaning unless they are understood as identification with and expression of sex-based stereotypes.

**2.10** The Women's Declaration International (WDI) says that 'Gender Identity' maintains women's inequality:

- the concept of 'gender identity' makes **socially constructed stereotypes**, which organize and maintain women's inequality, **into essential and innate conditions**, thereby **undermining women's sex-based rights**.
- the concept of 'gender identity' has enabled men who claim a female 'gender identity' to assert, in law, policies, and practice, that they are members of the **category of women, which is a category based upon sex**.

**2.11** We reject the concept of 'gender' as solely an inherent or individual identity or experience. We oppose the Yogyakarta Principles which define it this way. They have no standing in international law.

**2.13** It can be argued that a person's internal experience of 'gender', i.e. their 'gender identity', is a "belief that should not become the basis of law and policy, thereby erasing the

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<sup>27</sup> <https://womensrightsparty.nz/policy/p8>

political recognition of sex, and the existence of female persons as a specific class in law".  
Dr Jane Clare Jones.<sup>28</sup>

## Difficulty of defining 'gender'

The Women's Rights Party Policy states that: "Gender is an imprecise concept that refers to sex-based stereotypes and social expectations, e.g. what is considered feminine and masculine. Gender identity and expression refer to the identification with, and expression of these stereotypes."<sup>29</sup>

## The relationship between Sex and Gender

We ask the Law Commission to follow the definitions and meanings, and the understanding of the relationship between sex and gender, that have been established by CEDAW, the United Nations, the CEDAW Committee and the UN's Reem Alsalem. These are essential for protecting the rights of women and girls.

**2.15** Sex and gender are different but they are related. Gender refers to society's expectations about sex, i.e. sex-based stereotypes. Sex is not socially constructed. Gender is.

**2.16** The provisions for Self- ID for a "nominated sex" on the birth certificate in the BDMRRA mean that the birth certificate is not a reliable way to tell someone's sex. Until recently, when NZ law referred to sex, it meant sex. In the BDMRRA, the word "nominated" indicates that something other than actual sex is being referred to. It is much better to be clearer and truthful.

**Clause 79(2) of the BDMRRA** admits that the birth certificate is not a reliable way to determine someone's sex. It is important that this clause remains, whilst provisions for a "nominated sex" remain. We are not sure if the Law Commission, in **Ch 7.72**, is proposing removing this clause. We would strongly oppose that.

The conflation of sex and gender is harmful and should be stopped. This was obvious in the recent Census where Statistics NZ conflated the two at the same time as supposedly defining them separately.

**2.17** Introduces "gender critical" views, too little too late. Why weren't gender critical groups consulted before the issues paper? Concepts of 'gender' conflict with concepts of 'sex'. The WDI has noted that introducing gender into law has led to the erasure of sex, causing women to lose our sex-based rights. This is outlined in *"The Erasure of Sex: The Global Capture of Sex: The Global Capture of Policies on Sex by Gender Identity Activists and the Effects on the Rights of Women and Girls"*<sup>30</sup>

## Experiences of Discrimination (Chapter 3)

"There should be a law against it". The fact that people say this in response to perceived wrong shows how widespread the knowledge is that law can be effective in curbing behaviour.

Women have always had struggles to achieve equality under the law as it has historically been written by men for men. It was a law which marginalised, stigmatised and endangered

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<sup>28</sup> @janeclarejones on X, 27 May, 2021

<sup>29</sup> <https://womensrightsparty.nz/policy/p3>

<sup>30</sup> Page 6 <https://digitalcommons.uri.edu/cgi/viewcontent.cgi?article=1366&context=dignity>

women when abortion was illegal, it was law which made children legitimate or illegitimate, it was law which enabled unequal pay.

While the law is an instrument of justice, it can also serve to cause injustice and marginalisation of certain groups. Women are indeed a group which has keenly felt this impact.

Women have not always enjoyed the near equal status to men which now seems so natural it appears to be taken for granted by the younger generation. However, like all rights which have been won, women's rights need to remain protected and to be maintained.

**Chapter 3** discusses experiences of discrimination as if women have never had such experiences. We have, and women found ways to overcome some of these issues which did not impact on the rights of others. We set up domestic violence shelters which excluded men; and we pushed for legislation for protection from sexual violence, even from our legal spouses. It became apparent that to give men the right to our bodies at will was unacceptable in a liberal democracy.

It was law that enabled women to increasingly participate in society. As a result, women have added enormously to the social fabric we enjoy today.

Legislation reflected the recognition that our biological differences meant we needed services and facilities tailored to our unique needs. Single-sex public toilets, safe and private changing rooms in our places of work or recreation, provided protection under the law so we weren't seen as fair game for whatever sexual harassment men felt like indulging in, and to be taken seriously if we reported incidences to the police.

Women gained the right to say "No" to men. Do not take this right away from us by putting into law an obligation that we see others in the way they demand we see them, rather than the evidence of our eyes and ears. Do not humiliate us by denying our perception and do not tell us we are suffering from some phobia when our fear of male violence and sexual harassment is very real and absolutely justified.

Paid employment and financial independence have had a liberating effect on the female class. Things have improved phenomenally for women in the workplace and the right to equal opportunity in seeking employment should be a universal one.

However, there have been attacks on paid employment which have been directed at women for "wrong think".

### **Example**

*A member was reported to HR because she told a senior colleague she did not believe people can change sex. Her colleague denounced her as offensive and declared that she was "the wrong person for the job". Her manager then wrote her a letter demanding that she adopt the colleague's preferred style of speech and belief. She was forced to defend her right to freedom of thought, of belief and of speech to people who seemed to be unaware that such rights existed.*

If a trans activist or ally can get a colleague disciplined for expressing her opinion, or in some cases, dismissed from her employment, the oppressed has become the oppressor.

That individuals have rights is an extraordinary concept. At the same time, a free and flexible society balances individual rights with ensuring that others are not disadvantaged by things they have no control over such as the sex they are born with or the colour of their skin.

Most people are decent, are not out to harm others, and are tolerant of difference they may not fully understand. This is also true in the workplace where most people interact politely and respectfully. Many are happy to go along with preferred pronouns if they know the

person. However, a situation we should aim to avoid is where compelled speech builds up resentment toward and gives a weapon to an elite group who can use accusations of transphobia to cause trouble for people who simply do not share the same beliefs as them.

The trans community should also be practising tolerance and accept the fact there will always be many people who will never see them in the way they wish to be seen, and that should be permissible in a free society.

It should not be unacceptable for a woman to say "I identify as a woman, because I am female."

It is an absolute luxury to hold the belief that a violent male criminal has somehow become a woman and should now be housed in a female prison. That belief can only be held by someone who has the comfort of not being the one who will be in that prison with him.

### **Example**

*A member told the Law Commission that she knew first-hand how it feels to be arrested by a team of male police officers, to be handcuffed and transported, to have all her property searched. Those men were not looking at her favourably; they did not think much of her. She was thrown into a cell alone and it was a law that meant a female officer completed the strip search. The thought of what it would have been like for her to have one of the males do that procedure sickens her to the core. Male privilege should not be extended to enable those with an identity claim, to subjugate women to violation.*

When granting rights to a group, the question must be asked: "Will this create an elite group, a priest class, who are so protected that to criticise any aspect of the conduct is verboten? Is a new elite emerging who cannot be questioned, whose beliefs go unchallenged, who have vague yet powerful weapons such as 'feeling unsafe', 'transphobia' and TERF?" The accusation of "transphobia" and use of the word 'TERF' are powerful weapons in the silencing of those who have differing views.

The scientific method was developed to separate fact from fiction. Much persecution and misery has been avoided by setting aside belief in witches, sorcery, and evil spirits.

People have the right to hold these beliefs, but it requires hard evidence to have things treated as facts. Being female is a biological fact.

There seems to be no acknowledgement that many quit their 'trans' identities, accept their sexed body and continue with their lives. These people also deserve protection from the often harsh treatment from the transgender community.

Does there need to be acknowledgement in the Human Rights Act to say that it is acceptable to detransition in the same way it is permissible to quit a religious belief or adopt a new way of seeing the world?

So, what does it mean to be a TERF? A member told the Commission: *"It means I know I can never be outside my female body; I don't get to take a costume off.*

*"It means I do want to exclude males from some things. There should be toilets, changing, shelters and services which are female only. Males, whether they hold a trans identity or not, should be barred from strip searching women in police cells, prisons and customs facilities.*

*"To be a TERF is to be unpopular, to be ostracised, to be out grouped and unfriended. To be a TERF is to say that to disregard the need for female dignity in vulnerable situations is to allow for women to become second class citizens.*

*"To be a TERF is to say I think these things are wrong and it should not take this much courage to say so."*

The Women's Rights Party Policy asserts the right to question the concept of 'gender':

"The freedom of speech to question the concept of 'gender' and to assert the sex-based rights of females, is a fundamental human right. It is protected in the Bill of Rights, and must not be removed by any legislation, policy or government practice."<sup>31</sup>

**See Recommendation 9.**

### **Responses to the Issues Paper Chapter 3**

**3.3** We condemn social stigma and prejudice in relation to transgender and non-binary people as it has existed in the past. However, it should be noted that many transsexuals or transvestites, as they were once called, lived their lives quietly. As well, there was wide acceptance of the world's first transsexual MP Georgina Beyer.

We are wary of the claims of discrimination made by transgender and non-binary people cited as evidence of discrimination in the Issues Paper because it relies on self-reporting. Those self-reporting are likely to be influenced by a popular narrative promoted in the media and by government agencies that suggests (a) difference of opinion (i.e. believing in biology) is discrimination and (b) that being excluded from single-sex spaces is discrimination. In fact, both these ideas are contestable and could be understood in more positive ways, as difference of opinion and protection of sex-based rights.

We also question the claim that transgender and non-binary people are the most marginalised people in our society, though they may share characteristics with low-paid workers or beneficiaries, those with disabilities, Māori, Pasifika and other marginalised ethnic groups.

Women, particularly those raising children by themselves, are also marginalised in our society. Those on benefits are subjected to sanctions that affect their ability to form new relationships. Due to low pay in typically female jobs, low income over our lifetimes, part-time employment, career breaks to raise children, and disadvantage following relationship breakdowns, women are more negatively affected financially as we age. As we near 65 years of age, or over, it is very difficult to find employment, and although against the law, it is not uncommon for an employer to suggest that an employee retire on reaching 65.

Furthermore, as a result of feminism in the 1960s and 1970s, sex stereotypes were, until recently, being rejected. Girls who did not conform to notions of femininity were not 'transed' as boys. Similarly, boys who did not conform to notions of masculinity were not told they had been 'born in the wrong body'. Many Women's Rights Party lesbian members report they would have been 'transed' had they grown up in today's world. In that sense, transgender ideology is regressive.

The Women's Rights Party supports the aim of the Conversion Practices Prohibition legislation to protect lesbians, bisexuals and gay people from conversion practices and to promote open and respectful discussions about sexuality. However, we do not support the inclusion of 'gender, gender identity and gender expression' in this legislation because it can be seen as a form of gay conversion, and promoting 'gender identity' to children risks causing them permanent harm.<sup>32</sup>

**See Recommendation 10.**

**3.19** It is stated that "available data suggests that young people who are transgender and non-binary face significant challenges in the workforce". The evidence of this is to be found

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<sup>31</sup> <https://womensrightsparty.nz/policy/> p3

<sup>32</sup> *Conversion Practices Prohibition Legislation Act 2022.*

<https://www.legislation.govt.nz/act/public/2022/0001/latest/LMS487215.html>

in the *Counting Ourselves* survey, which we referred to earlier. We acknowledge that the survey respondents may be representative of the transgender population as it is today.

It could well be that the 'trans community' is now a younger population with more females than males, and more likely to identify as non-binary, given that the explosion of trans identity in the last 10-12 years has been fuelled by social contagion (Tik Tok and Tumbler) and what is happening in schools (more on that in our response to **Chapter 12**).

Nearly half (46 percent) of those who responded to the *Counting Ourselves* survey were under 24 (noting that this included those aged 14-16 who would not be in the workforce anyway). Further, 45 percent identified as non-binary, and there were more 'transmen' (29 percent) than 'transwomen' (26 percent). There was a higher proportion of European participants than the general population.<sup>33</sup>

Thus, the control group should reflect the experiences of young people, particularly young women, who are not trans identified, and who also may be finding they are not being paid the same as young men with the same university qualifications, for example. To use comparisons with the general population is misleading.

**3.20** It is difficult to know how applicants would know the reason they were rejected was because the interviewer "realised" they were transgender or non-binary. Unsuccessful applicants are not usually told why they did not get a job, and it may well have been because someone more suitable or better qualified had applied.

Given the preponderance of young respondents to the *Counting Ourselves* survey (46 percent aged 14-24), and that a quarter had a disability, it would be more relevant to compare difficulty in finding employment with the younger demographic, and those with disabilities. In particular, given the link with autism, it would be relevant to compare young people diagnosed as being on the autism spectrum who have identified as 'trans' or 'non-binary' with those also on the autism spectrum who have not identified in this way.

**3.21** Respondents to the *Counting Ourselves* survey also reported receiving worse pay and conditions than their co-workers, being bullied, being denied promotions, and leaving the job because of their treatment as a transgender or non-binary person. All of these issues can already be dealt with through existing Equal Pay or Employment Relations legislation, and do not require additional protection through the HRA. (See responses in **Chapter 9**)

## Perspectives and Concerns of Māori (Chapter 5)

We support the Mana Wāhine Kōrero submission.<sup>34</sup> The Issues Paper suggests that the concept of 'sex' as a binary of male and female is a Western concept that is not shared in Māori, Pacific and other cultures. We reject the assertion that many cultures encompass "transgender or gender fluid or the idea of a third gender" (p25, **Chapter 2**).

We support Mana Wāhine Korero's submission that there are no carvings, waiata, mōteatea (tradition of chants in song and poetry), and no known artifacts to prove 'gender' existed. Terms such as 'takatāpui' (Māori meaning 'intimate companion of the same sex') and 'fa'afafine' (Samoan meaning 'like a woman') have been redefined as supporting the existence of a third 'gender'.

**See Recommendation 11.**

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<sup>33</sup> <https://countingourselves.nz/wp-content/uploads/2022/09/FINAL-version-paper-survey.pdf>.

<sup>34</sup> <https://www.mwk.nz/post/carrying-the-torch-for-our-foremothers-mwk-speaks-to-the-law-commission>



## Should Section 21 be Amended? (Chapter 6)

### The Australian experience - 'Tickle v Giggle'

*Giggle for Girls* Chief Executive Sall Grover met with the Law Commission by Zoom on 15 August to outline the risks to women's on-line spaces of adding 'gender identity' to the Australian Sex Discrimination Act (SDA) in 2013 based on her experience in the case *Tickle v Giggle*.

In her presentation to the Law Commission, Sall Grover described how Roxanne Tickle downloaded the *Giggle for Girls* social networking platform Sall had created, which was designed to be a safe space for women. Users provided a 'selfie' to be assessed by artificial intelligence software to verify they were a woman.

Sall said Tickle's photo had initially been accepted, but later that year Tickle's account was restricted after a manual override because he was "obviously a man". Tickle claimed discrimination on the basis of 'gender identity'.

The definition of 'gender identity' in s 4 of the SDA is as follows:

**"Gender identity"** means the gender - related identity, appearance or mannerisms or other gender - related characteristics of a person (whether by way of medical intervention or not), with or without regard to the person's designated sex at birth.

There is no separate definition of 'gender' in the Act; nor does it presently define 'sex', 'man' or 'woman'. (Definitions of the last two terms were removed in 2013).

In what has been hailed as landmark decision in the Australian Federal Court on Friday, 23 August, Justice Bromwich ruled that the exclusion of a transgender woman from the female-only app constituted unlawful discrimination due to 'gender identity'.<sup>35</sup>

Justice Bromwich said the defendants considered 'sex' to mean the sex of a person at birth, which they considered to be unchangeable. He said these arguments failed because a long history of cases decided by courts going back over 30 years had established that, in its ordinary meaning, "sex is changeable".

This is highly contestable. The legal evidence was based on just three cases. And Colin Wright, a witness in the case, said that without an anchor in biological reality, laws based on 'sex' become meaningless and justice cannot be served.

Wright is an evolutionary biologist, and academic advisor for the Society for Evidence-based Gender Medicine.<sup>36</sup> His 4200-word report for the Court was dismissed by Tickle's lawyer who argued that while biology was relevant in the field of biology, the *Tickle v Giggle* case was concerned with the interpretation of 'sex' in the SDA.

In his Substack "Reality's Last Stand", Wright said: "At its core, *Tickle v Giggle* will determine whether a person's subjective 'gender identity' – a vague concept lacking scientific grounding – will take precedence over an individual's objective biological sex under Australian sex discrimination law."<sup>37</sup>

Wright wrote that even though sex became a protected category in Australian law due to the real and significant biological differences between men and women, there is no

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<sup>35</sup> [https://www.fedcourt.gov.au/\\_\\_data/assets/pdf\\_file/0013/120622/Summary-Tickle-v-Giggle-for-Girls-Pty-Ltd-No-2-2024-FCA-960.pdf](https://www.fedcourt.gov.au/__data/assets/pdf_file/0013/120622/Summary-Tickle-v-Giggle-for-Girls-Pty-Ltd-No-2-2024-FCA-960.pdf)

<sup>36</sup> <https://manhattan.institute/person/colin-wright>

<sup>37</sup> *Reality's Last Stand*, 23 August 2024. "Tickle v Giggle Judge Falsely Rules That Sex is Changeable". [colinwright+articles@substack.com](mailto:colinwright+articles@substack.com)

concern for whether terms like 'sex', 'male', or 'female' in the SDA actually reflect biological reality.

"This is absurd on its face. If the protected category of sex in the SDA was established based on biological facts, it logically follows that the SDA should reflect those biological facts. The concept of a 'legal fiction' – assumptions made by the law for practical reasons – can make sense in certain contexts, such as adoption, where the law treats adoptive parents and their adopted child as if they were biologically related. However, there is no practical reason to permit any male to simply self-declare into a protected category that was originally intended to exclude them."

Bromwich J found that a claim of direct discrimination had failed because it could not be established that his removal from the App was because Tickle was transgender.

However, the Judge found in favour of Tickle on the basis of indirect discrimination. This was based on a condition being imposed for the use of the Giggle app that Tickle was required to have the appearance of a 'cisgender' woman, a by-product of excluding men and failing to distinguish between "cisgender and transgender women".

As noted above, the Australian SDA defines 'gender identity' in relation to "gender-related appearance and mannerisms", both highly subjective concepts.<sup>38</sup>

Bromwich J said that even if the Giggle App could have been considered a 'special measure' to achieve equality between men and women (allowable under the SDA), as Sall's lawyers argued, that would not have allowed Giggle to discriminate on the basis of 'gender identity', which is distinct from discrimination against women on the basis of 'sex' under the SDA.

The Women's Rights Party does not agree. Given the hostility of trans activists to women on-line, it seems reasonable to argue that a women-only app that excludes men so women and girls can engage in issues that affect them, would also seek to exclude men who identify as women.

The court previously heard Tickle had lived as a woman since 2017, had a birth certificate reissued in 2018 to reflect a name change and stating Tickle's gender as female, and that he had undergone 'gender-affirming' (feminisation) surgery in 2019.

Reem Alsalem responded to the decision, which she labelled 'dystopian', as "distorting key concepts of sex and discrimination, while dodging Australia's human rights obligations vis a vis women. If unchallenged, this decision would set a dangerous precedent," she said.<sup>39</sup>

**See Recommendation 12.**

## **Responses to Issues Paper Chapters 6,7**

The 2006 Crown Law Opinion on transgender discrimination, referred to earlier, expressed the view that there was no need for additional protections on the grounds of 'gender identity' in the HRA because these protections were already provided under the 'sex' category.<sup>40</sup>

The opinion was sought as the issue had been raised in a 2004 private member's bill in the name of then Labour MP Georgina Beyer.

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<sup>38</sup> <https://www.legislation.gov.au/C2004A02868/2021-09-11/text>

<sup>39</sup> Reem Alsalem, *UNSR Violence Against Women and Girls*. @UNSRVAW

<sup>40</sup> <https://www.beehive.govt.nz/sites/default/files/SG%20Opinion%202020Aug%202006.pdf>

We agree that no additional protections on the grounds of 'gender identity' are needed. However, Crown Law did not fully clarify whether gender non-conforming people are protected as the sex they are, or as the sex they want to be.

We think that the rights of people who do not conform to sex stereotypes are covered in the HRA as the sex they are. It is clear that the HRA meant biological sex when it referred to sex, because it wrote "sex, including pregnancy and childbirth". Pregnancy and childbirth are functions of human females only, no matter how they identify.

The only useful change could be a more detailed definition of sex, ensuring that it is understood as biological, as we have outlined. 'Gender', 'gender identity and gender expression' should definitely not be introduced into the HRA.

**6.18-6.20 Harms to human dignity:** What about the harms to women's dignity?

**6.21 Consistency with international law:** The Law Commission has failed in its duty to include any information about CEDAW which clearly establishes women's sex-based rights.

**6.22** The Law Commission claims: "A large and growing body of international authority that interprets international human rights treaties to which Aotearoa New Zealand is a party as requiring people to be protected from discrimination based on their gender identity or sex characteristics."

What authority? We have already shown that the Yogyakarta Principles have no legitimacy. Reem Alsalem certainly does not agree with attempts to revise international law in this way.

**6.23** The Law Commission admits: "Gender identity, sex characteristics or equivalents are not mentioned explicitly as grounds of discrimination in any human rights treaties to which Aotearoa New Zealand is a party."

**6.26** The Law Commission implies that there has been pressure on New Zealand from UN Committees to do more to protect people on the grounds of 'gender' despite there being no international legislation about this. We see this as being a result of activists upon and within the UN who are trying to re-interpret international law to mean something that it does not.

We should not blindly follow international trends, just because they occur in countries viewed as liberal or democratic, when the harmful consequences of these trends are already being reversed, e.g. in the UK, Europe and the USA, following the Cass Report<sup>41</sup> and similar reports.

### Defining sex as biological sex

**7.64** "We are aware of suggestions that the ground of sex should be defined as referring to a person's biological sex and that exceptions in the Act that apply to sex should relate to biological sex. This is an issue that is being discussed in the United Kingdom with respect to the Equality Act 2010."

It is not a suggestion; it is a fact. It has been established that the rights in the Equality Act are primarily about biological sex.

CEDAW defines sex as biological. To define it differently would breach CEDAW.

Sex in the HRA is defined, and can be more explicitly defined, as referring to biological sex.

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<sup>41</sup> Cass Review *Independent Review of Gender Identity Services for Children and Young People..*  
<https://cass.independent-review.uk/home/publications/final-report/>

## No amendment to the ground of sex

We think the ground of sex could be defined further, as we have suggested, to make it absolutely clear that it is biological. Apart from that there should be no amendment and no inclusion of concepts of gender in the HRA. 'Gender' should not be conflated with sex or merged with sex in a "combined sex and gender ground". People who do not conform to sex-based stereotypes can claim discrimination on the grounds of the sex that they actually are, under the current legislation.

## Employment (Chapter 9)

A former union leader with 36 years' experience told the Commission she had only rarely come across issues relating to 'gender identity and expression'. That had changed in recent years with the emphasis on 'gender-neutral' language that erased the word 'women', and the introduction of 'education' for employees on 'gender' issues, often mandated and often delivered by outside agencies.

She highlighted three incidences from her experience.

1. *The paid Women's Officer of the Council of Trade Unions underwent cross-sex hormones to identify as a man. Members of the CTU Women's Council queried whether it was a right for her (now 'him') to continue in this role representing NZ working women on national bodies as well as internationally? (See commentary on **9.5** below.)*
2. *The CTU National Affiliates Council was considering the draft Strategic Plan. The section on Equity included equity for Māori, equity for Pasifika, equity for those with disabilities, equity for those from different ethnicities, but no mention of women. Was this a typo? Then she noticed that there was to be equity for 'those with different gender identities'. Surely, the intention was not to suggest that women were covered by 'different gender identities'?*
3. *DHBs (now Health NZ) have been developing policies to protect 'gender diverse' employees which, among other provisions, claim the right of 'transgender' employees to access toilets and changing facilities that align with their 'gender'. To be clear we are talking about men who identify as women accessing facilities where women employees are in their 'knickers and bras' changing into their uniforms and scrubs. (See commentary on **9.3** below.)*

Despite the CTU's attempt to erase women from its equity goals, women remain a disadvantaged and marginalised group in our society who are being discriminated against on the basis of our sex. It is notable that the Equal Pay Act is based on **sex-based discrimination**. There is no mention of 'gender' either in the original 1972 Act or the 2020 Amendments that sets out the process for pay equity claims.<sup>42</sup>

Occupations like cleaning, cooking, clerical work, and caring (such as childcare and nursing), are undervalued in our society because they are associated with '**women's work**'. It is called 'occupational segregation' and means that even those men in these women-dominated occupations (including men who identify as women) are also undervalued and underpaid. There is no such thing as a 'gender pay gap'.

There is no consideration of the rights of women employees to dignity and privacy in Gender Diversity and Inclusion policies, which are in place throughout the public sector

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<sup>42</sup> *Equal Pay Amendment Act 2020.*

<https://www.legislation.govt.nz/act/public/2020/0045/latest/LMS86440.html>

and other organisations.<sup>43</sup> The policies have pitted women's sex-based rights against rights based on 'gender identity'.

This has happened without changes to the Human Rights Act as if 'gender identity' was already in the HRA. In particular, the prevalence of 'transgender rights' policies in the public sector that undermine women employees' single-sex changing facilities raises questions about the applicability of **s46** to employees in the first instance, and then to Part 1A organisations, i.e. the public sector. (See **Chapter 16**)

If 'gender' was to be codified into the Act, that could make it difficult for women to contest such policies.

### **Example**

*A group of UK nurses are suing the NHS over a policy allowing employees to access changing rooms that align with their 'gender'.<sup>44</sup> After the nurses formally complained that a trans-identified male nurse accessing the nurses' changing room was watching them getting undressed as they changed into their uniforms, the women were told by HR that they needed to 'be more inclusive', 'broaden their mindset' and 'be educated and attend training'.*

This is exactly the attitude embodied in the Health NZ | Te Whatu Ora draft policy which requires ALL employees to comply with the policy themselves and to let their 'people leader' know if they see actions or behaviours by their colleagues that do not comply. Employees are required to "Support and engage in organisational initiatives and opportunities that improve people's understanding of diversity, and how we can be more inclusive."<sup>45</sup>

The relatively new emphasis on 'diversity and inclusion' does not include women. In fact, women employees are far more likely to be disciplined or lose their jobs if they question the prevailing gender ideology.

### **Example**

*A Women's Rights Party member was disciplined over a comment she made on an internal IR Women's Network group following announcement of a new initiative whereby IR was providing free period products. At sites where there were no gender-neutral toilets, these would also be placed in the men's toilets.*

*The member's comment said: "This is awesome but a shame it took so long coming. And interesting, that now that men can menstruate, free period products are available in all bathrooms."*

*The member reported that in recent years she had become increasingly concerned at the imposition of 'gender ideology' on employees. She said the intranet had a never-ending stream of content from the IR Rainbow Network that she found offensive and irrelevant to her work. This included: articles that conflated transgenderism and intersex conditions, there were posts about pansexuality, and posts for Lesbian Visibility week written by a trans identified man explaining what it is like to be a lesbian, among many other examples.*

*At her regular one-on-one meeting with her Team Leader a few days later, she was surprised to hear that her comment had upset and offended some people. She was told, 'they have*

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<sup>43</sup> <https://www.publicservice.govt.nz/assets/DirectoryFile/Transitioning-and-Gender-Affirmation-in-the-New-Zealand-Public-Service-V1-Optimised.pdf>

<sup>44</sup> <https://www.dailymail.co.uk/news/article-13459927/NHS-chiefs-legal-action-female-nurses-changing-room-transgender.html>

<sup>45</sup> <https://womensrightsparty.nz/te-whatu-ora-menstruation-advice-highlights-madness-of-trans-ideology/>

*the right to be offended' and her views needed to align to IR's views that 'IR supports gender'. The member was subsequently given a letter of expectations reminding her of her obligations as an employee under the IR Code of Conduct and IR's Te Pou o te Tangata values (How we do things at IR).*

*The letter repeated that our member's views were offensive and if she was unsure which of her views might be perceived as offensive or divisive, she should refrain from sharing her opinions altogether and remain silent.*

*The letter said her Team Leader would monitor and discuss her progress regarding these expectations and if she did not comply, it might lead to IR "following a more formal process, including a disciplinary process".*

*On behalf of our member, the Free Speech Union wrote to IR challenging them on their contradictory value of being an 'inclusive workplace' that values diversity of thought, beliefs, backgrounds and capabilities' while asking an employee to self-censor her views. In their response, IR doubled down on their position, saying the comment was inappropriate, not inclusive, and could be interpreted as offensive.*

*The FSU filed a personal grievance against IR on the grounds of unjustifiable disadvantage by labelling her anti-trans, and someone who has acted in a manner that is offensive, contrary to inclusivity and breaches IR policies.*

*After the FSU made her case public, she was contacted by a number of IR employees, internally, who felt the same about the barrage of inappropriate content and supported her, but said they were too scared to speak out at work.*

*The case went to mediation without resolution and has been filed in the Employment Relations Authority. Our member has since resigned.*

The freedom of speech to question the concept of 'gender' and 'gender identity' to assert the sex-based rights of females, is a fundamental human right. It is protected in the Bill of Rights Act and must not be removed by any legislation, policy or government practice.

## **Responses to the Issues Paper Chapter 9**

**9.5 (a)** It is unlawful to discriminate against an applicant or employee who is suitably qualified by 'reason' of a prohibited ground of discrimination. The reason for rejection or an offer of less favourable terms and conditions must be able to be proven. This is a high bar because unsuccessful applicants are not usually told why they did not get the job.

**9.5 (c) and (d)** Termination of employment or being subjected to detriment are already covered for all employees in the Employment Relations Act as grounds for a personal grievance, as is constructive dismissal. See **9.9 (a)**. Again, employees would have to prove that the reason for their dismissal or being forced to leave was because of their gender identity.

**9.8** Having personal information disclosed would be a privacy breach, which is already covered by legislation and by employment policies in the workplace. See **9.9 (d)**.

If removal from a customer-facing role was not justifiable, this could be grounds for a personal grievance as 'unjustified action' under the Employment Relations Act. See **9.9 (c)**.

Allowing 'gender diverse' employees to use toilets and changing rooms matching their 'gender identity' potentially breaches women employees' rights to dignity and safety although it appears **s46** does not apply in employment. **See (3) above.**

**9.25** Refers to **s27(1) of the HRA** allowing different treatment based on sex for reasons of 'authenticity'. There are times when a particular sex is a genuine occupational qualification for the role. See also **9.33** and **(1) above**.

**9.39** We support **s27(2)** allowing different treatment in employment based on sex for domestic employment in a private household. See **9.40** and **9.41**.

We query the inclusion of political opinion and religious beliefs in this same exemption, given these are not relevant to the service being provided.

The Issues Paper questions the exclusion of race, colour, ethnic and national origin, marital status, employment status and family status from the grounds covered by this exception. In our view these should not be included in **s27(2)**. They are not relevant to the service being provided. Further, it should be noted that many of these services are provided by NGOs that also have obligations not to discriminate on these grounds.

**9.44** We support the sex-based privacy exception in **s27(3)(a)** where the position needs to be held by one sex to preserve 'reasonable standards of privacy'. This includes intimate cares for the aged and those with disabilities, justifiable on grounds of dignity and privacy. It also includes strip searches such as those performed in prisons and Customs.

**Q24** We agree with the point in **9.52** that control over the extent to which others have access to one's naked body is fundamental in terms of right to privacy and to one's dignity. This seems counter to the statement, also in **9.52**, that a person's lack of comfort may be due to "prudishness, irrational fear and prejudice" which we find subjective and objectionable.

## Education (Chapter 12)

The Independent Review of Gender Identity Services for Children and Young People (commonly called the Cass Review) was commissioned in 2020 by England's National Health Service and was led by Hilary Cass, a retired consultant paediatrician and the former president of the Royal College of Paediatrics and Child Health.<sup>46</sup>

The Cass Review commissioned several independent peer-reviewed systematic reviews into different areas of healthcare for children and young people with gender identity issues, including gender dysphoria. Topics covered by the systematic reviews included:

- Characteristics of children and adolescents referred to specialist gender services.
- Impact of social transition in relation to gender for children and adolescents.
- Psychosocial support interventions for children and adolescents experiencing gender dysphoria or incongruence.

It is important that the Law Commission pays serious attention to the Cass Review, and understands that there is no evidence base to support the widespread, forced, social transitioning of children as it is canvassed in the Issues Paper.

**See Recommendation 13.**

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<sup>46</sup> Cass Review *Independent Review of Gender Identity Services for Children and Young People..*  
<https://cass.independent-review.uk/home/publications/final-report/>

The Cass Review found that:

- The social transitioning of children is not a neutral act, but an active intervention that has significant effects on psychological functioning and long-term outcomes for children.<sup>47</sup>
- There is no good evidence about the long-term outcomes of social transitioning.<sup>48</sup>
- Clinicians are unable to determine which children will go on to develop an enduring trans identity, and which will not.<sup>49</sup>
- The majority of gender dysphoric children attending the NHS health service in England have extremely complex patient presentations, with a mix of trauma, abuse, mental health diagnoses, past forensic history, autism spectrum disorder (ASD) and attention deficit hyperactivity disorder (ADHD).<sup>50</sup>

It is thought that around 85 to 90 percent of childhood gender dysphoria cases resolve naturally at puberty.<sup>51</sup> And the Cass Review found that social transitioning can harm children by preventing this natural resolution and putting children on a pathway to puberty blockers and cross sex hormones.

As the Cass Review states: “This is an area of remarkably weak evidence...The reality is that we have no good evidence on the long-term outcomes of interventions to manage gender related distress.”

An accompanying systematic review on the social transition of children concluded:<sup>52</sup> “It is difficult to assess the impact of social transition on children due to the small volume and low quality of research in this area. Importantly, there are no prospective longitudinal studies with appropriate comparator groups assessing the impact of social transition on mental health or gender-related outcomes for children. Professionals working in the area of gender identity and those seeking support should be aware of the absence of robust evidence of the benefits or harms of social transition for children.”

The Issues Paper canvasses ways to make it possible for a five-year-old girl to “change her gender” and then as a human right she would be able to:

- Attend a single-sex boys’ school (Issues Paper 12.16 - .33, 12.38 - .41, etc)
- Wear a boy’s school uniform (Issues Paper 12.38 - .41, etc)
- Use boy’s toilets and changing rooms (Issues Paper 13.64 - .71, 12.38 - .41, etc)
- Be referred to as a boy by all her teachers and peers while at school (Issues Paper 17.40 - 73, etc).

But it makes no sense to claim that it is a human right for a five-year-old child to choose her gender, or to undergo social transitioning at school. We know from the Cass Review that social transitioning is not a neutral act, but an active psychological intervention.

We also know from the Cass Review that the evidence base for the social transitioning of children is “remarkably weak” and that there is no robust evidence about long-term impacts on the emotional, cognitive, social or physical development of children. However, we do know that children and adolescents do not have the cognitive ability or maturity necessary

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<sup>47</sup> Cass Review Interim Report, Feb 2022, page 63.

<sup>48</sup> Hall et al: *Impact of social transition in relation to gender for children and adolescents*.

<sup>49</sup> Cass Review, Final Report, page 22.

<sup>50</sup> <https://www.england.nhs.uk>. Letter from Dr Cass to John Stewart, James Palmer May 2024.

<sup>51</sup> Gender Dysphoria in Children - American College of Paediatricians 2018.

<sup>52</sup> Hall et al: *Impact of social transition in relation to gender for children and adolescents*.



to make other decisions with significant potential impacts on their health, such as decisions to drink alcohol, smoke cigarettes or tattoo their skin, which is why we have age restrictions on these matters in law.

What is the likely long-term outcome for a five-year-old child if she chose to “change her gender” under the recommended Law Commission changes to the HRA? The fact is that the Law Commission does not know. The Law Commission is unable to find any adults to ask, because no adults in New Zealand have ever been through that experience.

The social transitioning of children is an experimental psychological intervention, and it would be reprehensively irresponsible to enshrine experimental psychological interventions on children as a “human right” in law.

For a girl who grows up, from the age of five, with her identity disconnected from her biological reality, and misled by every teacher that she ever had and every school that she ever attended into believing that she could actually be a boy, there simply is not enough evidence to know the likely long term outcomes for her mental and physical health, cognitive development, social development, ability to function within society, hold down a job, form lasting relationships, or sustain a family.

The Issues Paper puts a big emphasis on “lived experience”, including all of **Chapter 3** which discusses the lived experience of selected transgender identifying adults. But the lived experience of children who have been socially transitioned is completely overlooked. There is no discussion about the potential adverse impacts of social transitioning on children, and no discussion about the experiences of de-transitioners or the experiences of the vast majority of children who find that their childhood gender dysphoria resolves naturally at puberty.

### **Responses to Issues Paper Chapter 4 in relation to children**

**4.26** The Issues Paper states that, to be considered legitimate in contemporary human rights law, limits on rights should be ‘proportionate’. This means that they should create a benefit to society sufficient to justify the intrusion on people’s rights and freedoms. When it comes to children, the proposals put forward in the Issues Paper completely fail the test of proportionality because the benefit (or harm) to children and to society cannot be assessed.

**4.46** The Issues Paper states that good law reform is evidence based, and that the need to act is underscored by the proportionality principle. It states that to be proportionate, limits on rights must be demonstrably justified. When it comes to impacts on children, the proposed reforms are not evidence based and they are not demonstrably justified.

**4.44** The Issues Paper says: “Our aim is good law for all New Zealanders. For that, we need to understand as best we can the needs, perspectives and concerns of all those interested in or affected by the review”. But the Issues Paper completely fails to consider the long-term needs and concerns of affected children and it completely fails to consider potential adverse effects on the well being of children.

**4.50** The Issues Paper describes some principles of good law making, including the principle that law reform should only be undertaken if it is necessary and if it is the most appropriate way to achieve a policy objective. **4.50** states: “Before we propose law reform, we should be satisfied that the costs of legislating do not outweigh the benefits.” And: “Laws should be fit for purpose. They should be carefully designed to achieve their goals and to ensure that they do not overreach or result in unintended consequences”. And: “Laws need to achieve a balance between certainty and flexibility.”

The Issues Paper completely fails these principles of good law making, because the Law Commission cannot be satisfied that the costs of legislating do not outweigh the benefits. With regards to children, it cannot be satisfied that law reform is appropriate or necessary. It cannot be satisfied that the proposed changes will not result in severe adverse unintended consequences for children (including children who do not have gender dysphoria but would be required to play along with gender ideology at school if it was enshrined in the HRA). Finally, the proposals do not achieve a reasonable balance between certainty and flexibility.

### **Mixed-sex toilets and changing rooms in schools**

We have probably all heard the stories that are being widely circulated about the harms to children that are being caused by the introduction of mixed-sex toilets and changing rooms in schools. We commonly hear stories about girls who are prevented from using the toilet all day, because they are too afraid or disgusted to use the mixed sex toilets at their school.

In a recent radio interview, former politician Rodney Hide describes what seems to be an increasingly widespread situation:

*"The reality for my daughters, and all of their friends, is they can't go to the toilet at school. [The toilets are] all unisex. The boys will be boys and piss all over the seat. They go and do a dump and don't shut the doors, 'cause they think it's funny that the girls have to walk past. They [Rodney's daughters] say it's disgusting. They say it is totally disgusting if you want to go to the toilet. ... No dignity, no modesty, no femininity, absolutely destroyed. And I can see the effect it is having on my girls."*<sup>53</sup>

The Women's Rights Party recognises the reality of biological sex, and the differences between males and females. We consider that the privacy, safety and dignity of school children is best served by the provision of safe, single sex, toilet and changing facilities in schools. The installation of mixed-sex toilets and changing rooms in schools is proving to be a failed social experiment that is harming children and young people. The Law Commission should avoid the error of trying to enshrine failed social experiments in human rights law.

**See Recommendation 14.**

### **Single sex schools**

**12.16 to 12.33** The Issues Paper canvasses the idea that single-sex schools in New Zealand could be effectively abolished via changes to the Human Rights Act, should single-sex schools could be forced to accept enrolments from students of either sex.

This would be an egregious assault on the rights of parents to choose the type of school that they send their children to. There are many benefits to single sex schools, particularly for the educational success of girls, and many other reasons why parents choose to enrol their children in single-sex schools (including choices based on religion).

**4.20–4.22** The Issues Paper states that autonomy (or freedom) is foundational to human rights law and anti-discrimination law. It says that in general terms, autonomy refers to a person's right to make choices and have their choices respected without being dictated to by the state or others. It states that equality and autonomy are closely connected, and anti-discrimination laws "open up valuable options to people who have previously had few".

"Access to a reasonable range of goods, facilities and services, like access to a reasonable range of employment opportunities, is essential for those who are to lead autonomous lives." And it continues: "Conversely, ideas about freedom or autonomy also underlie some

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<sup>53</sup> <https://realitycheckradio/replay: Rodney Hide Real Talk 8th August 2024>

of the limits the Human Rights Act places around the reach of anti-discrimination laws. Liberal democracies recognise an area of liberty within which people are entitled to act on their individual preferences in relation to matters of concern to them”.

In proposing the effective abolition of single sex schools, the Issues Paper completely ignores parental rights, and fails to apply any of the described concepts of autonomy, equality and liberty to its assessment. Furthermore, the proposal fails the test of proportionality as it is described in **4.26** of the Issues Paper.

**See Recommendation 15.**

## Exceptions for single-sex facilities (Chapter 13)

The Women’s Rights Party has policy headed “Protecting women’s and children’s spaces and safety”:<sup>54</sup>

- Women and girls have the right to single-sex gatherings for any purpose. This includes the right to women-only social media groups.
- Single-sex spaces preserve women’s and girls’ safety and dignity. These include, but are not limited to toilets, changing rooms, prisons, refuges, rape crisis centres, saunas, swimming facilities, hospital wards and other facilities.
- In particular, school policies should guarantee that all children in schools have the right to privacy from the opposite sex in single-sex spaces, such as toilets and changing rooms.
- The Women’s Rights Party opposes the housing of biological males in women’s prisons. The human rights of all women prisoners must be fully respected.

The words ‘gender’ and ‘gender identity’, mutable concepts, are part of the preferred language of trans lobby organisations and their allies. If ‘gender’ and ‘gender identity’ are put into **s46** of the HRA, it will serve to put those words in contest with ‘sex’, with the real possibility of women’s sex-based rights being eroded.

Nowhere is this erosion of women’s sex-based rights more obvious than where women and girls will potentially be forced to accommodate any man who gender-identifies as a woman in their spaces.

The fact is there are Councils that have already forced women and girls into this situation, for example the Christchurch City Council. In their recent Equity and Inclusion Policy, the C, Council refused to put the word ‘sex’ in the list of people who should have equity, but included the word ‘gender’.<sup>55</sup>

In the video of that meeting (at the 12-min mark in part 2 of the link below), the councillor driving the policy, can be heard to give her justification for excluding the word ‘sex’. Direct reference was given in that justification to the views of transgender lobbyists. The tone of her argument came across as considering the word ‘sex’ to be in contest to the word ‘gender’, and a threat to the precedence of gender-identity over sex.<sup>56</sup>

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<sup>54</sup> <https://womensrightsparty.nz/policy/p5>

<sup>55</sup> Christchurch City Council, Equity and Inclusion Policy. <https://ccc.govt.nz/the-council/plans-strategies-policies-and-bylaws/policies/strengthening-communities-policies/equity-and-inclusion-policy>

<sup>56</sup> Christchurch City Council, Hearing Panel’s Report. <https://councillive.ccc.govt.nz/meeting-topic/hearing-panels-report-to-the-council-on-the-proposed-equity-and-inclusion-policy/>

The exclusion of the word 'sex' from the Christchurch City Council's policy has the consequence of eroding women's sex-based rights. The policy enables any man who gender-identifies as a woman to have free and unfettered entry into all female spaces in Council-owned facilities. Whilst not all men will identify as a woman and do this, the choice is entirely theirs.

The consequence of this is that women and girls in Christchurch have been relegated to being less than men who identify as woman, due to the Council deciding that 'gender-identity' trumps sex.

If the words 'gender' and 'gender-identity' were to go into the Human Rights Act legislation, including **s46** which gives the right to have single-sex spaces, it may be extremely difficult to undo this consequence. More weight needs to be given to women's sex-based rights than is discussed in the Issues Paper.

Further, we recommend that **s46** be added to the list of Part 1A exemptions that apply to organisations exercising government functions such as local Councils, so that it is clear that Councils cannot simply erase women from policies that relate to their provision of single-sex facilities.

### **Request for evidence about the negative impacts of allowing men who identify as women into female spaces**

Periodically, it gets stated that no hard evidence exists to show that allowing men who identify as women into female spaces is detrimental to women and girls. **This is not true.**

The entire history of humankind, and police records as far back as they go, show that men as a group, of any stripe or identity, are a potential threat to women and girls. No group of males is exempt - not minority, marginalised, or vulnerable groups. Our problem as women is we cannot tell who is an actual threat, and who is not, bearing in mind that not all men commit violence against women - but some do.

Women are expected to undergo this experiment of allowing men who identify as women into our spaces, purely because they have provided stories about being a minority, marginalised, and vulnerable. This anecdotal, based on personal experience and feelings, is treated as if it were evidence. No hard evidence was required to show that men who identify as women do not have the same levels of criminality as men who have not transitioned.

To our knowledge, the same hard evidence which is deemed to be absent from women's reasons for not wanting men who identify as women in our spaces, is also absent from the reasons which those same men give for wanting access to female spaces.

At **Chapter 13 Paragraph 19**, the Law Commission states that it is interested in learning what evidence there is to support the concerns women have about sharing female-only spaces with men who identify as women.

To date, no one in any position of leadership or authority has asked for women's stories on how we feel about knowing that any time we go into a female space now, we go in there with the knowledge there may be men in there who say they are women.

We have not been asked how we feel when we encounter them, what behaviours from them we've seen or experienced whilst in that space, the visceral reaction by abused women upon seeing them there, and how those encounters may negatively affect our future use of facilities and engagement in public life.

No official avenue has ever been provided to tell those stories honestly and without fear of reprisal. The collection of anecdotal, and acting on that, has been one-sided only in favour

of men who identify as women. It is an outrage to say or imply that no evidence exists when women have been shut down, humiliated, and vilified when trying to speak out, or to provide such evidence.

The Law Commission urgently needs to implement an official avenue to collect evidence from women and girls about sharing female facilities with men who identify as women.

Finally, we will all have to live with the consequences if 'gender' and 'gender identity' are put into the HRA, so all our voices need to be heard, not just the voices of vocal lobbyists.

### **Unisex toilets and changing rooms**

Unisex toilets and changing facilities are put forward as replacements for single-sex facilities as a possible solution to allow everyone safety, dignity, and privacy. Whilst some unisex facilities are both necessary and desirable, they are not desirable as a total replacement for single-sex facilities, especially for women and girls.

Some of the reasons are –

- Men are not as clean as women overall when urinating. This means that women often have to wipe toilet seats before they can sit down on them, and take care that the hems of their pants don't come into contact with urine on the floor when they take them down to sit on the toilet seat.
- Men can lurk around unisex facilities without being challenged.
- Men can install spy cameras in unisex facilities.
- Men can more easily enter a unisex facility, shut the door behind a woman or girl, and assault her. The fact that these often have floor to ceiling walls and doors means that a woman in this situation may not be heard if she attempts to resist.

These news items show two examples of objectionable behaviour from men in unisex toilets in NZ, and the other, UK data which shows that unisex changing rooms put women at risk of sexual assault.

- 1) *A Timaru man who used an extended mirror to spy on a naked and pregnant woman showering in an aquatic and fitness centre's changing room admitted the indecent act in April 2024 and will be sentenced at the end of August.*

*The man used a small round mirror attached to the end of an extendable pole of 68cm in length and positioned it to watch women showering in the next cubicle.<sup>57</sup> It was not the first time he had done this. Over a period of at least a month, the defendant has located a weakness in the design of the unisex changing rooms, identifying a gap between cubicles at the top of the rear and side wall.*

*The design flaw is not the biggest problem here – there are always men who take any opportunity they encounter to predate on women and girls, and unisex facilities offer that opportunity more than single-sex facilities do.*

- 2) *A 72-year-old Auckland relief teacher, a man, prosecuted for making multiple intimate visual recordings, sexual conduct with a child under 12, unlawful sexual connection and knowingly making objectionable videos, has been sentenced to six years imprisonment.<sup>58</sup>*

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<sup>57</sup> <https://www.stuff.co.nz/nz-news/350256142/name-suppression-peeper-who-spied-showering-woman>

<sup>58</sup> <https://www.odt.co.nz/star-news/star-national/victims-parents-confront-teacher-who-made-illicit-videos>

*The objectionable publications charges related both to child exploitation and to “dehumanising behaviour” - a reference to 18,000 images and 77 videos of used menstrual products which he had removed from gender-neutral toilets around Auckland for sexual gratification.*

- 3) *The UK Independent reported in 2018 on data showing that unisex changing rooms put women at risk of sexual assault.<sup>59</sup>*

*The data, obtained through a Freedom of Information request, found that unisex changing rooms are more dangerous for women and girls than single-sex facilities. Just under 90 per cent of complaints regarding changing room sexual assaults, voyeurism and harassment are about incidents in unisex facilities. Two thirds of all sexual attacks at leisure centres and public swimming pools took place in unisex changing rooms.*

*Despite that hard data, unisex-only facilities are still being implemented both there and here in NZ.*

### **Single-sex spaces**

All the reasons we once knew as to why single-sex spaces have been provided for women and girls seem to have been drowned out in the noise of alternative views. In her Substack article, Katrina Biggs lists advice and information passed down from our mothers, aunts, and grandmothers, based on women’s life experiences throughout our human history.<sup>60</sup>

*Sex Matters UK* has also recently published the results of a survey covering this.<sup>61</sup> Not surprisingly, there are many overlaps between the *Sex Matters’* survey, and Katrina Biggs’ more informal information gathering, as women’s experiences have a certain amount of commonality everywhere, whether written, observed, or spoken.

### **Why single-sex services matter: Privacy, dignity, safety and choice**

- a. Most physical violence, including sexual assault, is committed by males.
- b. There is no evidence that males who say they’re women commit less violence.
- c. Male assaults against women and girls are committed more often in unisex spaces.
- d. There is no way of ascertaining which unknown males, whether or not they say they’re women, will commit an assault, or intimidate, until they do it.
- e. Women and girls should not have to clean up boys and men’s urine from toilet seats in unisex amenities before they can use them, nor should they have to dodge urine on the floor. These unhygienic practises of careless urination occur far more frequently by males than females.
- f. In order to fully participate in public life, women and girls rely on public toilets and changing amenities being safe places from physical harm and intimidation.
- g. Women and girls who have been subjected to violence by men will not feel safe or comfortable in what should be single-sex spaces if there is a man in there, irrespective of the man’s character or appearance.
- h. Women and girls cannot thrive unless they feel confident that they are safe from harm or indignity. Our bodies are designed for menstruation, maternity, and menopause. Sometimes the unexpected happens with them, and it can be embarrassing and/or distressing if that’s in the presence of unknown men.

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<sup>59</sup> <https://www.independent.co.uk/life-style/women/sexual-assault-unisex-changing-rooms-sunday-times>

<sup>60</sup> <https://aboldwoman.substack.com/p/why-women-and-girls-need-single-sex>

<sup>61</sup> <https://sex-matters.org/wp-content/uploads/2022/07/Single-sex-services-key-findings.pdf>

- i. Some women may have toddlers or babies in pushchairs with them, too, as well as either an ambulatory or disabled child, which necessitates leaving the toilet door open to keep an eye on them, as the cubicle cannot accommodate everyone.
- j. Women rely on other women to help them through awkward or difficult situations, and other women are routinely found in single-sex spaces.
- k. Women and girls with disabilities or any sort of body self-consciousness, for whatever reason, especially need single-sex changing rooms, and a male presence will be very distressing.
- l. Girls and young women can learn by absorption, whether consciously or subconsciously, about being a woman by being in an environment with a mixture of women on a regular basis. Having men in female spaces, or only having unisex spaces, stifles this natural and time-honoured method of learning about the world without effort.
- m. Women and girls have historically used female single-sex spaces to escape unwanted attention or harassment from males. Unisex spaces don't offer this unfortunately necessary sanctuary.
- n. A service provider may believe that if a physical assault from a man who says he's a woman doesn't happen, then nothing has happened. Wrong. Leering, lurking, and exhibitionism by males are highly offensive behaviours, are a power-play, and can feel very menacing.
- o. If no complaints are received from women about being forced to share single-sex spaces with men who say they're women, it does not mean there are no complaints. It just means that they're not making the complaints to the service provider, or other authority. This can be because -
  - there is no easy way to make the complaint
  - there is no woman to make the complaint to, and it may feel too personal to make the complaint to a man
  - reception of the complaint may be unfriendly, and the woman is made to feel wrong
  - she may be embarrassed, mortified, or distressed about what has just happened, and only wants to escape the place asap - i.e. the flight response
  - she cannot adequately articulate the complaint due to English not being her first language
  - she cannot immediately find the words to express how she feels about a situation she's never previously encountered, but knows is wrong, because she's never needed to find those words before
  - she's not comfortable making a fuss, for any number of reasons
  - she's shy, awkward, or non-articulate, and isn't confident in approaching staff
  - in the case of asking for an audience with one's local MP, not all people have the knowledge, ability, confidence, or experience to know how to approach an MP and present a case to them about why it is wrong to allow any man who says he is a woman to have free and unfettered entry to all women's spaces and sports, nor have the persistence when they are met with prevarication, or their request is initially ignored

#### **Four more links about incidents in female and unisex facilities**

The man in this news item sexually assaulted a woman in a communal female toilet facility, and when arrested said he was "female".

[UK: Man Who Identified Himself As "Female" Sentenced After Sexually Assaulting Woman in Train Station Bathroom - Redux](#)

A teenage schoolboy hurt a fellow schoolgirl student, when he kicked open the cubicle door the unisex bathroom she was using so her could take photos of her in it.

[UK: Teen Girl Hospitalized After Being Attacked in Unisex School Bathroom - Reduxx](#)

A man with a history of sexually predatory behaviour was discovered to be watching women undress in gender-neutral changing rooms at the local recreation centre.

[CANADA: Sex Offender Convicted After Using "Gender-Neutral" Changing Room to Watch Women Undress - Reduxx](#)

A London Metropolitan police officer who secretly filmed a woman in a unisex fitting room.

[UK: Police Officer Avoids Prison After Filming Woman in 'Gender-Neutral' Changing Room - Reduxx](#)

## Polls/Surveys

The Law Commission cited the *Counting Ourselves* survey as a credible source of information, despite the survey having flaws in its execution. In the same review in **chapter 13, paragraph 20**, it is implied that surveys with questions on how women feel about sharing single-sex spaces with men who identify as women may be unreliable, because of how the questions may be posed.

Poll after poll from reputable polling companies show that women are increasingly uncomfortable about sharing single-sex spaces with men, including those who identify as women.<sup>62</sup>

## Loss of single-sex rooms in hospitals

Up until 10 years ago, men and women were afforded the dignity of a same-sex spaces when admitted into a ward in a hospital.

Areas like the Emergency Dept, Intensive Care and Cardiac Intensive Care are usually a shared sex area, but there are generally no walls and staff levels are increased due to the nature of the work, so there is an overall higher level of patient visibility and safety.

This has slowly eroded to the point where now a woman is likely to share a four-bed room with three men, and a man potentially could share a room with three women. There are no health and safety risk assessments made before putting men and women in the same room.

People are admitted to hospital because they are very unwell, their physical and mental status are often changed due to infection or disease.

### Example 1

*Recently I was in hospital for a week due to very serious infection in my eye with a very high risk that I could lose vision completely in that eye. While in that hospital room, a man who was the partner of the woman next to my bed was permitted to sleep in the bed with her and her brother was permitted to sleep on the floor between our beds. At the time I was on multiple medications to help with pain and sleep and felt very vulnerable with two males unknown to me being able to share the same room with very little staff oversight.*

### Example 2

*A client of mine was a 35-year-old woman who was admitted to hospital with Guillain-Barré Syndrome, a condition in which the immune system attacks the nerves. This patient was*

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<sup>62</sup> <https://aboldwoman.substack.com/p/kiwis-increasingly-dont-buy-into-gender-ideology>



paralysed from the shoulders down. She was occupied in a four-bed room with three men, all in their 50s.

This young woman had to deal with the usual bodily functions that every human does, but in addition to this was her menstrual cycle which had to be managed by nurses as she was so incapacitated for months due to the paralysis. Intensive rehabilitation was required so that she could learn to walk, eat, and shower again. This rehabilitation was undertaken for months, all while under the view of the three men in the same room completely unrelated to her.

### Example 3

My elderly mother, who was in her 90s, was admitted to hospital with pneumonia. The elderly man opposite her in the four-bed room was wearing a hospital gown that opened in the back baring his naked bottom. This was as degrading for him as it was to my mother who was very ill. She died while in the hospital.

### Summary

Women's Rights Party members feel strongly that women, and men, should be afforded the dignity and safety of same-sex spaces when we are at our most vulnerable, including but not limited to toilets, changing rooms, prisons, refuges, rape crisis centres, saunas, swimming facilities, hospital wards and other facilities.

Biological sex is completely different to a 'gender identity' and being forced to share a hospital room is a violation of basic human rights. It is essential for both men and women to be separated when in hospital care. Women report to feeling threatened when in a mixed-sex room, whereas men report to feeling a loss of dignity - this can lead to psychological trauma.

Women are subjected to very intimate care when in hospital and sometimes all that separates them from the person next door is a flimsy curtain. Patients occasionally are also not themselves when presenting to hospital because of an underlying medical condition so they are more likely to get lost or cover themselves inappropriately. The risk of sexual harm, violence and agitation is increased due to illness or disease, but there is a reasonable expectation that women should be kept safe while returning to good health.

**See Recommendation 16.**

## Competitive Sports (Chapter 14)

The Women's Rights Party opposes any additional grounds being added to **s49(1)**, the exception in relation to sport. The current exception includes only sex, and the reasons, (strength, stamina, and physique) are clear biological factors relating specifically to sex.

**Section 49(1)** *Exception in relation to sport: Subject to subsection (2), nothing in section 44 shall prevent the exclusion of persons of one sex from participation in any competitive sporting activity in which the strength, stamina, or physique of competitors is relevant.*

The purpose of sports categories **is to exclude**. In sport there can be age categories, weight categories, disability categories, and categories in relation to sex. The purpose of the women's sports category is to exclude men or male advantage. When based on biological sex, the women's sport category provides safety (for contact and combat sports) and fairness.

Fairness and safety matters for women and girls in competitive sports. This is true whether that competition is at elite, professional or community level such as grassroots, age group

or master's level. All competitive sport for girls and women should be reserved for females only.

Opportunities for women and girls in sports range from participation, scholarships, leadership, teamwork, developing new skills, prize money and medals, and access to new opportunities such as sponsorship deals, travel and so on. The inclusion of males in the women's sport category excludes females and reduces the opportunities available to women and girls.

Of the 20 medals New Zealand won in Paris, 14 (eight of them gold) were won by women or women's teams. Imagine if there was no longer a women's category in sports, it would be unlikely for there to be women in the A final, let alone on the podium.

For example:

- At the 2024 Olympics, Alicia Hoskin and Lisa Carrington's winning time of 1:37.28 in the Women's K2-500m is slower than the 8<sup>th</sup> team (or 16<sup>th</sup> place in 1:35.00) in the B Final in the Men's K2-500m.
- At the 2024 Olympics, Emma Twigg's silver medal time (7:19.4) and the gold medallist (7:17.28) in the Women's Single Sculls was faster than only one time, in the four men's finals A-D (24 men) which range from 6:37.57 to 7:22.71.
- At the 2023 World Championships, Lisa Carrington's time of 1:47.769 was only faster than one paddler in the C Final of the Men's K1- 500m (final times range from 1:36.262 to 1:48.979). (*Note: at the Olympics the men compete in the k1-1000m not the K1-500m.*)

Serena and Venus Williams were beaten 6-1 and 6-2 by the 203rd ranked player on the men's tennis circuit. Serena Williams and Martina Navratilova, the greatest women's tennis players of the Open Era, have both been outspoken in their opposition to males identifying as women who are competing in the women's sports categories.

Navratilova has called Italian Valentina Petrillo a 'pathetic cheater' as the transgender athlete is set to make history at the Paralympics. "Yet another male stealing women's trophies. In Paralympics, no less. Sickening," Navratilova has been reported as saying.<sup>63</sup>

Male advantage begins during puberty. Until around 12 years of age, there is little difference between boys and girls in testosterone levels. That changes markedly around age 13. Males aged 13-17 have typical levels of testosterone ranging from 208.08 to 496.58 ng/dl compared with females in the same age group whose typical range is 16.72 to 31.55 ng/dl. The typical range of adult males is 265 to 923 ng/dl compared with adult females whose typical range is 15 to 70 ng/dl.<sup>64</sup>

The physical advantages of male puberty include body size, bone structure, muscle mass, strength and power.<sup>65</sup> Sports scientist Ross Tucker and 33 others wrote in the *Scandinavian Journal of Medicine & Science and Sports*: "These physical advantages are so large that they necessitate a separate and protected female category that excludes male advantage to ensure safe and fair competition for female athletes."

Tucker was involved in the World Rugby study that resulted in banning males from women's rugby. Tucker et al report that mandatory sex testing was abolished in 1999 partly to avoid

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<sup>63</sup> <https://www.gbnews.com/sport/olympics/transgender-paralympian-pathetic-cheater-martina-navratilova-savage>

<sup>64</sup> <https://www.medicalnewstoday.com/articles/323085>

<sup>65</sup> Tucker, R et al. *Fair and Safe Eligibility Requirements for Women's Sports*. *Scandinavian Journal of Medicine & Science and Sports*. <https://onlinelibrary.wiley.com/doi/epdf/10.1111/sms.14715>

traumatising and stigmatising some athletes with XY difference of sex development as it was thought then that these athletes did not have male advantage.

“However, 25 years later there is evidence that sex is a crucial differentiator to ensure fairness and safety for female athletes, including those with XY DSDs who experience male typical development from testes producing testosterone even in athletes who may have been observed as female at birth,” the scientists said.

Tucker et al have recommended the following solutions:

- Recognising that females’ sport that excludes all male advantage is necessary for female inclusion.
- Recognising that exclusion from female sports should be based on the presence of any male development, rather than current testosterone levels.
- Not privileging legal ‘passports’, sex or gender identity documents for inclusion into female sport.
- Accepting that sport must have means of testing eligibility to fulfil the category purpose.

It should be noted that few would argue against testing for the presence of performance-enhancing drugs (doping). Screening for ‘sports sex’ involves a simple cheek swab to determine sex characteristics.

The Women’s Rights Party believes that the current Sport NZ Guiding Principles for Inclusion of Transgender People in Community Sport are not fit for purpose and should be repealed immediately.

**See Recommendation 18.**

## **Part 1A and the NZ Bill of Rights Act (Chapter 16)**

As you can see in our responses above, the provision of single-sex services and spaces is very important to women and girls, as it is in some cases to men and boys for whom privacy and dignity may also be of concern. **S46** allows for private organisations to lawfully maintain and provide separate facilities for each sex on the grounds of public decency and safety.

However, **Part 1A of the HRA** sets out rules that apply in government departments and to people and bodies exercising government functions, essentially incorporating sections of the Bill of Rights. Under **s19 of the Bill of Rights**, everyone has the right to freedom from discrimination “on the grounds of discrimination in the Human Rights Act”.

This right may be limited as long as it is justified in a free and democratic society and proportionate, i.e. creates a benefit to society sufficient to justify the harm. Not only are these tests more loosely defined than the exceptions outlined in Part 2 applying to private organisations, but as the Issues Paper points out in **16.14**, the line between Parts 1A and 2 is grey due to uncertainty about what involves government functions.

For example, State schools, integrated schools, and tertiary institutions fall under Part 1A, while there is dispute as to whether ECE centres and private schools are regulated by Part 2 exceptions.

Council-run toilets, changing rooms, and swimming pools, are likely to be covered under Part 1A, while gyms and shops fall under Part 2. This means a Council can not lawfully exclude men who identify as women from a women-only swim session, but private gyms can exclude men from women’s sessions.

There are some exceptions provided in **s21A (1) (a) and (b)**. In these cases, exceptions in Part 2 also apply to the public sector, essentially allowing for discrimination in favour of women, for example, under certain circumstances. These include a list of exceptions that relate to employment, racial disharmony and harassment, sexual harassment, and employees affected by family violence.

What is not included in the Part 1A exceptions is the provision of single-sex services and spaces. We think this is problematic as it means it could be unlawful for hospitals, most schools, the public sector, and local Councils to positively discriminate on the basis of sex in the maintenance and provision of single-sex services and spaces.

As the Issues Paper points out in **13.65**, it could be that excluding a transgender school student from a single-sex facility that aligns with their gender is a breach of **s57** of the HRA amounting to discrimination or adverse or less favourable treatment. Yet a survey conducted by Curia Market Research found that 69 percent of New Zealanders support single-sex bathrooms and changing facilities in schools.<sup>66</sup>

Similarly it could be unlawful for a public hospital to exclude a transgender patient, or any patient of the opposite sex, from rooms in a hospital ward where sick and vulnerable women are being cared for. Those who drafted the HRA in 1993 would not have thought it necessary to require hospitals to provide single-sex rooms for patients (whether single, 2-bedded or 4-bedded rooms) as this simply did not happen until recently. (See our examples in response to **Chapter 13** above.)

There appears to be no exception allowing for single-sex toilets and changing facilities for employees in the case of workplaces as **s46** sits within exceptions relating to the provision of goods and services, rather than employment matters. We recommend that **s46** be added to the list of exceptions in relation to employment matters, although this would only apply to the private sector unless it was extended to the public sector by including it in the **Part 1A exceptions in s21A (1)**.

While complaints under Part 1A can be tested in the Courts, these can also be made to the Human Rights Commission. The Issues Paper suggests that by adding 'gender identity' to the HRA, the number of complaints is likely to increase. This reinforces our concern that extending sex-based rights to men who identify as women, the only group that would benefit from such an action, will put women in a position of having to defend our rights to single-sex services and spaces in the Human Rights Tribunal and Courts, as we have seen in Australia in 'Tickle v Giggle', which is looking as if it will end up in the Australian High Court where the Federal Court decision may be overturned on appeal.

**See Recommendation 18.**

## Cross-cutting Issues (Chapter 17)

### Language

The review uses the same language and terminology introduced and promoted by trans advocacy and lobbying organisations (such as Gender Minorities Aotearoa) and their allies in academia. The use of this language gives the impression of a narrative running through the Issues Paper that favours the views of trans advocates and their allies at the expense of the views of women whom this will affect. Such an impression leaves us concerned that

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<sup>66</sup> Curia Market Research Poll 2024. [Speakupforwomen.nz/post/poll-results-on-single-sex-facilities-in-schools](https://www.speakupforwomen.nz/post/poll-results-on-single-sex-facilities-in-schools)

women are being expected to sacrifice our rights and agency for the sake of men who identify as women.

For the sake of clarity, a 'woman' means an adult human female. The prefix 'cis', which is used throughout the Issues Paper, is not required. We are women, not a 'gender identity', and we are not a subset of our own sex class. Use of the word 'cis' is highly offensive to many women.

Also highly offensive is use of the term "assigned a sex at birth". Midwives do not guess the sex of a newborn infant; nor do they have a quota to assign this baby as a boy and another as a girl to make up 50 percent each of the population. Remarkably, like other mammals, around half of conceptions result in females (slightly more in the case of humans). A baby's sex is usually observable by the 20-week scan, and can be detected by a blood test of the mother much earlier (if Y chromosomes are found in the maternal blood sample, then the unborn child must be male). In New Zealand, a baby's sex is recorded at the birth as either male, female, or in very rare cases, as 'indeterminate'.

The Issues Paper uses the term 'transgender and non-binary' which is problematic as the terms embrace a variety of people who share very little in common. A 60-year-old heterosexual autogynephilic male who is sexually aroused at the thought of passing as a woman, and who may have other paraphylia such as voyeurism, is a very different risk to women and girls than an adolescent male who may be autistic or called a 'nerd' and has suddenly found acceptance within the school's 'transgender community'.

Similarly, the conflation of those with 'innate characteristics of sex', rare medical conditions, with those identifying out of their sex, in our view, is a mistake. The former is real; the latter in the case of Rapid Onset Gender Dysphoria, is often the product of 'social contagion'.

### **'Trans teens' and social contagion**

This is particularly an issue with teenage girls. *Thoughtful Therapists* founder James Esses says that before 2010, there was no scientific literature on girls having gender dysphoria. Then came Tumblr and Tik Tok with glorification of trans identity playing on the natural insecurities of adolescents. Today in the UK, two out of three 'trans teens' have friends who have also identified as trans; multiple girls are coming out in the same classroom in weeks. 'Trans' has imbedded itself in the everyday language and culture of children and adolescents.<sup>67</sup>

*Sex Matters* co-founder, journalist and author Helen Joyce points out that social contagion is a 'culture-bound' syndrome like hysteria, diagnosed by doctors and the media (including these days through social media) based on a symptom pool of feelings.<sup>68</sup>

She points out that there have always been those who do not conform to sex stereotypes. Lesbians and gay men risked social ostracism and prison for expressing their sexual orientation.

We have discussed how sex stereotypes can be a prison for women, especially for girls who see what they are supposed to be like on social media. Girls who do not measure up to the beauty standards of the social media influencers, may find a home within the in-trans group at school.

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<sup>67</sup> Esses J. *Trans teens: social contagion*. *Battle of Ideas Festival 2023*.  
<https://www.youtube.com/watch?v=eUFaljVzq2g>

<sup>68</sup> Joyce H. *Trans teens: social contagion*. *Battle of Ideas Festival 2023*.  
<https://www.youtube.com/watch?v=eUFaljVzq2g>

The danger is that girls are engaging in irreversible mutilation of their bodies which we are being asked to affirm in ways we never affirmed anorexia or other forms of self harm.

### Misgendering and dead naming

The Law Commission seeks feedback as to whether there should be a provision in Part 2 of the HRA about 'misgendering' and 'deadnaming' (see **Q75**).

'Misgendering' is defined in **17.40** as referring to a person who is "transgender or non-binary by the wrong gender (for example, using pronouns for them that correspond with their sex assigned at birth)". The English language differentiates between the third person singular pronouns 'she/her'; 'he/him') and third person plural ('they/them').

It is confusing to use the third person plural to refer to a singular person (for example, in a news story when a dog control officer, previously identified as a man, was dismissed but was referred to in the story as 'they' suggesting that several employees were dismissed.<sup>69</sup>

On the other hand, is misleading to refer to a man identifying as a woman in news reports as 'she' in the case of sex offenders and convicted murderers. In one such story, the *NZ Herald* reported that Police were appealing for sightings of Bronwyn Warwick, 74, who was considered so dangerous that "she" should not be approached. Warwick, a man identifying as a woman who had been housed in a women's prison, was convicted of murdering an elderly woman and kidnapping and robbing a law student in the past 30 years.<sup>70</sup>

The *Otago Daily Times* reported on Pierre Parsons, who now identifies as female, who was 18 when "she" tied up a 12-year-old girl in a public toilet and violently raped her. The paper reported that 'she' served 11 years for that offence and within two years of 'her' release, was back in jail. Details of the original offence shows how violent it was.

"Parsons dragged her down a corridor into a changing room where she undressed her, then she took the unconscious victim into another room and raped her," the ODT reported.<sup>71</sup>

In the last two cases, the photos that accompanied the stories showed they were obviously both men.

'Dead naming' is defined in the Issues paper as "referring to a person who is transgender or non-binary by a name they no longer use and that draws attention to their sex assigned at birth".

We agree with **17.42** and **17.43** that regulating 'misgendering' and 'dead naming' arguably infringes rights contained in the Bill of Rights, including the right to freedom of expression, and rights to be free from discrimination on the basis of religion or political opinion.

A New Zealand teacher lost his teaching registration for using a student's 'dead name' and refusing to use her preferred pronouns, which he said went against his religious beliefs.<sup>72</sup> While most teachers go along with their students' preferences on an individual basis, the fact that their profession compels teachers' speech is a breach of their rights to adhere to scientific evidence and material reality in schools that are supposed to be secular. There

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<sup>69</sup> <https://www.rnz.co.nz/news/national/504730/tired-animal-control-officer-killed-gisborne-dog-sarge-inquiry-finds>

<sup>70</sup> <https://www.nzherald.co.nz/nz/wanted-south-auckland-74-year-old-bronwyn-warwick-convicted-of-murder-kidnap-robbery-in-past-30-years/>

<sup>71</sup> <https://www.odt.co.nz/news/dunedin/sex-offender%E2%80%99s-supervision-continue?>

<sup>72</sup> <https://www.nzherald.co.nz/nz/christian-teacher-stripped-of-registration-after-refusing-to-use-trans-students-pronouns/>

have also been reported cases of students using preferred names at school to express their 'gender identity' of which their parents are unaware.

The Women's Rights Party is concerned that regulating speech in the HRA could lead to further discrimination against women and men expressing 'gender critical' views (e.g. if they are challenging workplace policies) and could lead to arrests for 'hate speech'.

**See Recommendation 19.**

## Binary language in the Human Rights Act

The Issues Paper notes in **17.72** that replacing third person singular pronouns with 'they/them' would be symbolic. The Women's Rights Party views gender-neutral language "for the sake of it" as virtue signalling that is likely to cause resentment among most New Zealanders and could backfire on the desire to be more inclusive. This is because replacing sex-based language is seen as excluding or erasing women.

There are times when using sexed language really matters, for example in health. We note the trend to use terms such as 'birthing people', 'cervix havers' and 'menstruators' to apply to women, while advertisements relating to prostate cancer are clearly aimed at men. The use of desexed language can be confusing to those whose first language is not English and potentially endanger their health.

Although outside the Terms of Reference, the Commission has asked for feedback on 'binary' language in relation to pregnancy and childbirth. This is because **s74** allows for preferential treatment because of "a woman's pregnancy or childbirth". Note that we would add breastfeeding to this.

The Commission suggests rewording **s74** to clarify that it applies to any person, including non-binary people or transgender men, who are pregnant or giving birth i.e. the section might simply refer to "preferential treatment by reason of pregnancy or childbirth".

Noting this is also included in the definition of 'sex' in the **s21** list of prohibited grounds, we point out that women who identify as non-binary or as men are already covered by their sex class. This is because only natal women can get pregnant and give birth, as well as breastfeed.

**See Recommendation 20.**

## Recommendations

1. That the Law Commission contracts a reputable polling company to survey New Zealand women (and men) to identify the importance they attach to the sex-based rights in the Part 2 Exceptions.
2. That the Law Commission invites those women's organisations that have submitted on the Issues Paper to serve as an Expert Group to examine the evidence contained in the submission process, with the lens of sex-based rights that would be at risk should 'gender identity' be introduced into the HRA. These would include the Women's Rights Party, Mana Wāhine Kōrero, Speak Up for Women, FOWL, LAVA, Resist Gender Education and Save Women's Sports.
3. That the Law Commission recommends to Parliament the provision of separate services for "de-transitioners", who may be reluctant to engage in those services that facilitated their pathway to transition. This is in line with recommendations of the Cass Review.

4. That the Law Commission recommends to Parliament review or repeal of the changes to the BDMRRA. If birth certificates include provisions for a “nominated sex”, it needs to be clear that this is the individual’s preferred sex and not biological sex. Clear and accessible records must be kept of any changes to the birth certificate, and this information must also be recorded on the certificate itself. Further, no child under 18 should have a “nominated sex” on their birth certificate, unless the original sex on the birth certificate was incorrect, for example, in the rare instance of a child born with a difference of sexual development (DSD or ‘intersex’).
5. That the Law Commission considers the experience of those with DSDs separately from issues associated with being transgender or non-binary. The Commission should give more weight to those health professionals with expertise in this area to more clearly define the scope and treatment of DSDs in Aotearoa NZ today, given the contradictory evidence in the Issues Paper.
6. That the Law Commission recommends to Parliament that the s21 Prohibited grounds of discrimination remain as they are. ‘Gender’ refers to socially constructed behaviours that society expects from one or other biological sex, which often perpetuate inequalities between the sexes, while ‘gender identity’ is an inner feeling experienced by an individual that has no place in law and policy.
7. That the Law Commission pays serious attention to CEDAW, as international law that New Zealand is obliged to abide by. The sex provisions of the Human Rights Act were written in order to comply with CEDAW and any changes to the law which reduced or removed the protections on the grounds of sex, both the anti-discrimination provisions and the exceptions where discrimination is permitted on the grounds of safety, dignity and privacy, would be in breach of CEDAW.
8. That the Law Commission consults with women’s organisations such as the Women’s Rights Party to come up with a clear science-based definition of ‘sex’. We have provided the following suggestion:
 

*A person’s ‘sex’ refers to a person’s biological sex (either male or female).*

*‘Women’ and ‘girls’ refer to human females, and the words ‘men’ and ‘boys’ refer to human males.*

*‘Human female’ denotes the sex with a reproductive system typically organised to bear offspring or produce eggs, distinguished biologically by the production of gametes (ova) that can be fertilised by male gametes, and includes females whose reproductive system may be disordered in some way and those females who choose not to reproduce.*
9. That the Law Commission makes it clear in its Report to Parliament that freedom of speech to question the concept of ‘gender’ and to assert the sex-based rights of females is protected in the Bill of Rights Act 1994 and must not be removed by any legislation, policy or government practice.
10. That, although considered out of scope of the current Review, the Law Commission recommends to Parliament removal of ‘gender’ from the Conversion Practices Prohibition Legislation Act. The Women’s Rights Party supports the aim of the Conversion Practices legislation to protect lesbians, bisexuals and gay people from conversion practices and to promote open and respectful discussions about sexuality. However, we do not support the inclusion of ‘gender, gender identity and gender expression’ in this legislation because it can be seen as a form of gay conversion, and promotion of ‘gender identity’ to children risks causing them permanent harm.



11. That the Law Commission engages with a wider range of Māori and Pasifika who have not been captured by Critical Race Theory and Queer Theory and can contribute a perspective steeped in their traditions.
12. That the Commission examines international examples of jurisdictions that have implemented protections based on a conflation of 'gender identity' with 'sex' with a lens on the impact of such protections on women and women's sex-based rights.
13. That the Law Commission pays serious attention to the Cass Review, and understands that there is no evidence base to support the widespread, forced, social transitioning of children as it is canvassed in the Issues Paper.
14. That the Law Commission recommends to Parliament that the privacy, safety and dignity of school children is best served by the provision of safe, single sex, toilet and changing facilities in schools. The installation of mixed-sex toilets and changing rooms in schools is proving to be a failed social experiment that is harming children and young people.
15. That the Law Commission recommends that single-sex schools consider the rights of parents to decide the educational needs of their children and adolescents and should not be accepting enrolments from students of the opposite sex.
16. That the Law Commission considers the need for women and men to be afforded the dignity and safety of same-sex spaces when we are at our most vulnerable, including but not limited to toilets, changing rooms, prisons, refuges, rape crisis centres, saunas, swimming facilities, hospital wards and other facilities. Sex, not gender, will allow women to be accommodated in an environment that enhances our physical and mental wellbeing.
17. That the Law Commission recommends to Parliament the amendment of s21A(1)(a) to include s46 (Exceptions in relation to public decency or safety). The purpose of this is to allow discrimination on the basis of sex to provide for single-sex spaces such as toilets, changing facilities, hospital rooms, and services such as women-only swim sessions provided by local Councils.
18. That the Law Commission reinforces New Zealanders' overwhelming support for safety and fairness in sport at all levels. We recommend that no additional grounds are added to the exception s49(1). If clarification is required regarding the definition of sex, then it needs to be defined as biological sex to prevent the situation where a document is falsified by sex self-ID and used as proof of sex as occurred in the Paris Olympics.
19. That the Law Commission makes no recommendation to Parliament with respect to 'misgendering' and dead naming'. Restrictions in relation to names and pronouns have no place in the HRA or government policies. The Women's Rights Party is concerned that regulating speech in the HRA could lead to further discrimination against women and men expressing 'gender critical' views (e.g. if they are challenging workplace policies) and could lead to arrests for 'hate speech'.
20. That the Law Commission uses clear and plain language when referring to women in the media, academia, in healthcare, at work and at home. In particular, we object to the term "cisgender woman", to the suggestion that babies are 'assigned a sex at birth', and the use of 'gender neutral' pronouns.

**Contributors to this submission included:** Kate Ormsby, Sall Grover, Janet, Katrina Biggs, Dianne Landy, Rex Landy, Sue Hoskins, Jill Ovens, Alison Scott, Marnie Fornusek, Linda Sheldon, Christine Massof, and many other Women's Rights Party members whose wisdom and experiences helped inform our views.

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