

## POSITION STATEMENT

### Review of Transgender & Non-Binary Protections in the Human Rights Act 1993 by the Law Commission

#### OVERVIEW

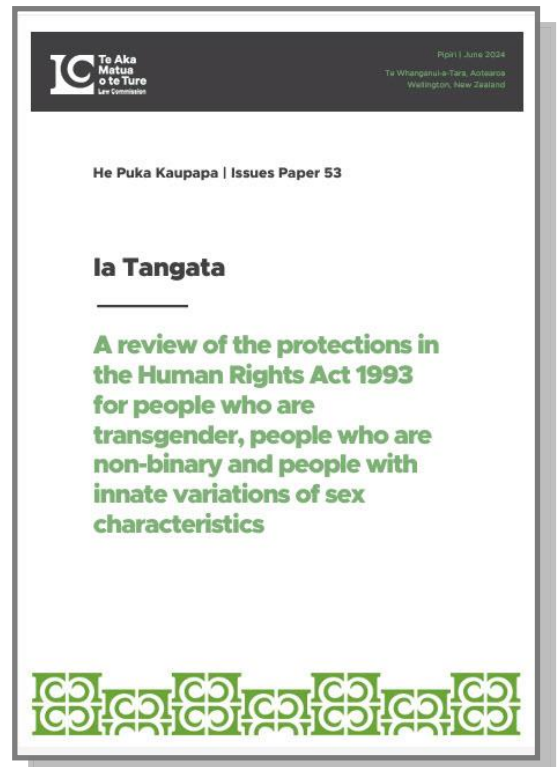
We oppose the intentions of the proposed review of the protections in the Human Rights Act 1993 for people who are transgender, non-binary and people with innate variations of sex characteristics presented. Specifically, the recommendation to amend Section 21 to explicitly include protections for transgender, non-binary individuals, and those with innate variations of sex characteristics.

While we acknowledge the intent to enhance protections for specific groups, we believe the current legislation as it stands already provides these proposed protections.

Our opposition is based on the following key concerns:

#### 1. Gender (identity) is contested

- a. In section 2.9, Gender is defined in a number of different ways including being used as an umbrella term of gender identity and gender expression. **The ambiguous use and definition of terms like gender and gender identity raises risks of inconsistent application of the law, ambiguity and uncertainty of the law as a result of being open to varied interpretations.** Unintended consequences such as new forms of discrimination may arise due to the potential misuse of the law to policy and legislative conflicts.
- b. **Expanding the grounds of sex to include gender (which is a social construct)**
- c. **The Issues paper uses language that stems from gender ideology such as sex assigned at birth, cis-gender, gender-affirming surgery to name a few examples.** Some would argue these terms are contested yet are being used to reform laws that should be based on clearly defined terms supported with evidence.
- d. The language used implies that biological binaries such as sex are a matter of opinion and perhaps only limited to certain cultures and civilisations.  
For example, in section 2.6 - *“In Western societies (or societies with a history of Western colonisation), sex is generally seen as a binary.”*  
This generalised statement implies sex is a contested term when there is a plethora of scientific evidence supporting sex as biological binaries.



- e. In section 2.49, the Pacific terms provided to describe gender identity are misleading and insinuate being grounded in gender ideology. For some Pacific cultures, the concept of transgender and even gender identity do not have the same foundations as the Western definitions of these terms. The blatant disregard for the nuances of these terms in their cultural contexts not only misleads public discourse on the subject, some would argue is an example of cultural misappropriation.

## **2. Erosion of Freedom of Expression and Speech**

**Amending Section 21 to include specific protections for groups already covered by the current legislation could stifle freedom of expression and speech.**

Establishing protected categories risks causing individuals and organisations to self-censor or face legal repercussions for expressing dissenting or controversial views. The fear of legal consequences could stifle open debate and the exchange of ideas, which are crucial for a vibrant and democratic society.

## **3. Potential for Legal and Administrative Complexity**

The proposed amendments could introduce substantial legal and administrative complexity. Proposed amendments such as expanding the ground of sex to include gender, explicitly defining protections for specific groups may lead to intricate legal interpretations and increased litigation. This complexity could burden the legal system and administrative bodies, diverting resources from other critical areas of human rights protection and potentially slowing down the resolution of cases.

## **4. Risk of Social Division and Polarisation**

The inclusion of specific protections for transgender, non-binary individuals, and those with innate variations of sex characteristics could exacerbate social and political polarisation. The contentious nature of gender identity debates could lead to heightened tensions and resistance from various sectors of society. This polarisation may undermine social cohesion and hinder productive dialogue on human rights issues.

## **5. Unintended Consequences for Existing Rights**

The proposed amendments could inadvertently impact existing rights and protections for other groups such as biological women. The introduction of new legal categories may create overlaps or conflicts with established rights under the Human Rights Act and the Bill of Rights potentially leading to legal ambiguities and unintended consequences.

It is crucial to ensure that new provisions do not undermine or dilute existing protections for other groups.

## **6. Lack of Comprehensive Consultation**

The review process may not fully reflect all stakeholders' diverse perspectives and concerns, including those who may have reservations about the proposed changes.

The nature of the online submission itself is problematic with questions that may seem biased towards one view of the issue at hand.

Furthermore, we were very concerned about the disclaimer that reads:

*“Threatening, abusive or unlawful communications: The issues in this review sometimes generate strong opinions and disagreement. It is our role to consider all sides of an issue. We also need to keep our people safe. **If a submission contains material that is threatening, abusive or unlawful, we will stop reading it and will disregard its contents.**”* (our emphasis added)

We raised this issue in a recent meeting between Family First and the Law Commission.

They assured us that it was only about hostile or abusive language in a submission which was aimed towards staff of the Law Commission. We completely understand and respect this stand.

**We encourage you to be respectful in your submission** - but we also would ask that you notify us if you think your submission has been censored in anyway because of respectfully stating your understanding of biological and your opposition to gender ideology.

We must ensure that all voices are heard and that the review's recommendations are well-informed and balanced.

## **CONCLUSION**

While the intentions and goal of enhancing protections for the specified groups are commendable, we believe that the proposed review of the Human Rights Act 1993, specifically focusing on amending Section 21, poses significant risks and challenges.

We advocate for a more comprehensive approach that considers the broader implications of such legislative reforms and emphasises a balanced, inclusive dialogue on human rights.

It is essential to carefully evaluate the potential impacts and unintended consequences before implementing changes to ensure that biological truths rooted in evidence lead the way rather than ideology and that the rights of all New Zealanders are protected.