

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

TERMS OF REFERENCE

Scope of the Review

The Law Commission will examine whether the current wording of the Human Rights Act 1993 adequately protects people who are transgender, people who are non-binary and people with innate variations of sex characteristics and, if not, what amendments should be made. The Law Commission's review will include, but not be limited to, consideration of the following matters:

- Whether to extend, modify or further define the prohibited grounds of discrimination in section 21 of the Human Rights Act;
- In the light of any amendments the Law Commission may recommend to section 21, whether the techniques used in the Human Rights Act to distinguish between justified and unjustified discrimination remain adequate to protect the rights of all New Zealanders. In particular, the review will consider the various exceptions in the Human Rights Act that outline when differences in treatment are permissible;
- Whether any amendments are desirable to the sub-part in the Human Rights Act named "Other forms of discrimination";
- Whether the law is consistent with Te Tiriti o Waitangi | the Treaty of Waitangi and ngā tikanga Māori, and whether it is responsive to the needs and concerns of Māori;
- Whether any consequential amendments to other legislation are desirable and/or whether any reforms we propose to the Human Rights Act may have consequential implications for other legislation.

Matters that will not be included in the Review

There are several limitations on the scope of this review.

First, the Law Commission has only been asked to examine the adequacy of protections in the Human Rights Act. This project will not involve an independent review of any other New Zealand laws (although we may recommend consequential amendments to other legislation and/or consider the consequential implications for other legislation of any proposals for reform). For example, the project will not involve an independent review of references to sex or gender in other New Zealand legislation.

Second, this also means the Law Commission will not be directly reviewing the human rights protections found in other human rights statutes (such as the New Zealand Bill of Rights Act 1990) or at international law. The New Zealand Bill of Rights Act protects a range of rights such as fair trial rights and the freedoms of opinion and belief, expression, religion and association. By contrast, the Human Rights Act primarily relates to anti-discrimination law.

Third, the Law Commission has not been asked to review the Human Rights Act as a whole. The focus of this review is specifically on protections in the Human Rights Act for people who are transgender, non-binary and/or have innate variations of sex characteristics.

Finally, the Law Commission has decided that, in this project, it will not review:

- Sections 61 and 131 of the Human Rights Act, which relate to the incitement of racial disharmony. This follows a request from the Minister of Justice that the Commission withdraw issues relating to hate speech from its work programme.
- Section 63A of the Human Rights Act, which relates to conversion practices. This provision was enacted in 2022 after extensive consultation. It is too soon to reconsider the policy on which it was based or to evaluate how it is working in practice.

Process and Timing

The Law Commission expects to publish an Issues Paper in mid-2024 and to provide opportunities for public engagement, including submissions.

The Law Commission anticipates there may be wide interest in this review. Those with a particular interest may include people from the following (overlapping) groups: those who are transgender, non-binary and/or have innate variations of sex characteristics; experts; Māori; women's groups; rangatahi/young people; and people from Aotearoa New Zealand's ethnic minority communities.

The Law Commission intends to report to the Minister responsible for the Law Commission by the end of June 2025. It will then be up to the Government whether to accept any recommendations the Commission makes for reform of the law.

The Terms of Reference were originally published on 2 August 2023. They were updated on 25 June 2024 following receipt of a letter from the Minister of Justice requesting that the Commission withdraw issues relating to hate speech from its work programme.