



Report of the

ATTORNEY-GENERAL

under the New Zealand Bill of Rights Act 1990
on the Legislation (Definitions of Woman and
Man) Amendment Bill

Presented to the House of Representatives pursuant to
Section 7 of the New Zealand Bill of Rights Act 1990 and
Standing Order 269 of the Standing Orders of the House of
Representatives

1. I have considered whether the Legislation (Definitions of Woman and Man) Amendment Bill (the Bill) is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 (the Bill of Rights Act).
2. I have concluded the Bill limits s 19 (the right to be free from discrimination on the basis of age) and cannot be justified under s 5 of the Bill of Rights Act.
3. As required by s 7 of the Bill of Rights Act and Standing Order 269, I draw this to the attention of the House of Representatives.

Summary

4. The Bill aims to uphold legal certainty and protect sex-based rights by requiring that where the words “woman” and “man”, and “male” and “female”, are used in legislation, these are interpreted in biological terms. For example, the Bill defines a “woman” as “an adult human biological female”.
5. I consider the Bill gives rise to discrimination on the basis of age. This is because the Bill defines “woman” and “man” in a way that requires them to be “adults”. This effect of the Bill means that people under 20 would be excluded from the scope of statutory provisions that use the terms “woman” and “man” unless the content or context of the legislation requires a different interpretation. Although the extent to which the new definition would be overridden by the particular context is not clear, I find the Bill creates sufficient risk of unjustified age discrimination that it should be drawn to the attention of the House under s 7 of the Bill of Rights Act.
6. For completeness, I also considered whether the Bill gives rise to discrimination on the basis of sex by requiring the terms “woman”, “man”, “male” and “female” to be interpreted in a way that excludes trans-identifying men or women. In this respect I note that the government’s 2006 position that the prohibition on discrimination on the ground of sex also prohibits gender identity discrimination has not yet been confirmed by Parliament nor the courts. Further, the legal effect of the Bill is uncertain and limited, given that it does not affect the definition of “sex” or the framework of exceptions in the Human Rights Act 1993 (the Human Rights Act), which sets out circumstances where it is permissible to distinguish on the basis of sex. In these circumstances, I do not consider that there is a sufficient basis on which to conclude that the Bill is discriminatory on the grounds of sex.

The Bill

7. The Bill amends the Legislation Act 2019 (the principal Act) to introduce a definition of “woman” as “an adult human biological female” and “man” as “an adult human biological male” in new sections 13A and 13B. The terms “male” and “female” are also defined as “human biological male” and “human biological female” correspondingly.
8. The explanatory note states that the Bill seeks to uphold legal certainty, protect the integrity of sex-based rights, and ensure that language in law reflects biological reality. In a media release, the Rt Hon Winston Peters stated that the Bill would

safeguard sex-based protections and the importance of sex-based rights. The media release linked the Bill to the protection, progression and safety of women in New Zealand and ensuring that access to services and facilities such as women’s sports and changing rooms is focussed on biology.¹

9. The Human Rights Act prohibits discrimination on the basis of sex. It also sets out circumstances (‘exceptions’) where it is permissible to distinguish on the basis of sex: for example, to enable the maintenance of separate facilities for each sex on the ground of public decency or public safety, exclusion of persons of one sex from certain competitive sporting activities, and the provision of counselling restricted to persons of a particular sex where highly personal matters (such as sexual matters) are involved.²
10. The Human Rights Act describes these exceptions in terms of “sex”. Because the Bill defines the terms “woman” and “man” but does not mention or define “sex”, the Bill does not affect these exceptions.
11. The terms “woman” and “man” appear relatively rarely in legislation – and predominantly in older legislation – in line with standard gender-neutral drafting practice in recent decades.
12. If the Bill is enacted, the new definitions of “woman”, “female”, “man” or “male” will apply wherever those terms appear in primary or secondary legislation,³ unless the legislation provides otherwise or the context of the legislation requires a different interpretation.⁴
13. It is unclear how the definitions in the Bill are intended to interact with s 16 of the principal Act, which provides that “words denoting a gender include every other gender”.

Consistency of the Bill with the Bill of Rights Act

Section 19 – Freedom from discrimination

14. Section 19(1) of the Bill of Rights Act affirms that everyone has the right to freedom from discrimination on the prohibited grounds set out in s 21 of the Human Rights Act.

¹ New Zealand First Media Release, 22 April 2025: “New Zealand First introduces Bill defining “woman” and “man” in law”: [New Zealand First Introduces Bill Defining ‘Woman’ and ‘Man’ in Law - New Zealand First](#)

² Human Rights Act 1993, see for example ss 43, 45, 46, 47, 49, 55 and 58; *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* (NZLC R150), p. 111.

³ Legislation Act 2019, s 5(1).

⁴ Legislation Act 2019, s 9.

15. Two factors must be met for discrimination to be identified under s 19(1):⁵
- 15.1 there is differential treatment or effect as between persons or groups in analogous or comparable situations on the basis of a prohibited ground of discrimination; and
 - 15.2 that treatment has a discriminatory impact (i.e., it imposes a material disadvantage on the person or group differentiated against).

Age discrimination

16. Section 19(1) of the Bill of Rights Act affirms that everyone has the right to freedom from discrimination on the basis of age, commencing at the age of 16 years.⁶
17. As noted above, the Bill provides that in any legislation, regardless of gender identity, “woman means an adult human biological female” and “man means an adult human biological male”. It also defines “male” and “female” in similar terms, but without requiring a “male” or “female” to be “adult”.
18. Section 4 of the Age of Majority Act 1970 provides that in the absence of a statutory definition or indication of a contrary intention, the expression “adult” in any legislation shall be construed as applicable to persons who have attained the age of 20 years.
19. As a result of the combined effect of the Bill and the definition of “adult” in s 4 of the Age of Majority Act, any references in legislation to “woman” or “man” would no longer include persons under the age of 20, unless the content or context of the legislation required otherwise.
20. If the terms “woman” and “man” were interpreted as applicable only to women and men over 20 wherever they appeared in legislation, there would be a wide range of presumably unintended consequences, including:
- 20.1 Women under the age of 20 no longer being eligible to apply to the court for a declaration of paternity.⁷
 - 20.2 Women under the age of 20 no longer being able to access the defence of infanticide in the Crimes Act 1961.⁸

⁵ *Ministry of Health v Atkinson* [2012] NZCA 184, [2012] 3 NZLR 456 CA at [55]; *Child Poverty Action Group Inc v Attorney-General* [2013] NZCA 402, [2013] 3 NZLR 729.

⁶ New Zealand Bill of Rights Act 1990, s 19(1) and Human Rights Act 1993, s 21(1)(i).

⁷ Status of Children Act 1969, s 10.

⁸ Crimes Act 1961, s 178.

- 20.3 No penalty being available under the Crimes Act 1961 for giving in marriage or transferring a woman under the age of 20 years to another person without their consent.⁹
- 20.4 A partner or spouse of a woman under the age of 20 being unable to take parental leave because law requires a certificate certifying that a woman is pregnant.¹⁰
- 20.5 The death of a woman under the age of 20 while giving birth not having to be reported to Police.¹¹
21. I consider that these kinds of outcomes, if they eventuated, would involve differential treatment on the basis of age that amounts to material disadvantage to women under 20.
22. Courts may be unlikely to interpret these provisions in this way because it would be clearly contrary to the purpose of the provisions in question, and because it appears to be an unintended consequence of the Bill.
23. However, declining to apply the new statutory definition of “woman” would directly conflict with the ordinary meaning of its text. Actors other than the courts may be less willing to depart from the definition’s ordinary meaning.
24. Although the impact of the insertion of the new definitions is unclear, I consider that the inclusion of “adult” in the Bill’s definition of “woman” creates sufficient risk of discriminatory outcomes to justify the conclusion that the definition amounts to *prima facie* discrimination on the basis of age.
25. A limit on a particular right or freedom may nevertheless be consistent with the Bill of Rights Act if it can be considered reasonable and justified in terms of s 5 of that Act. The s 5 inquiry was summarised by the Supreme Court in *R v Hansen* as follows:¹²
- 25.1 Does the provision serve an objective sufficiently important to justify some limitation of the right or freedom?
- 25.2 If so, then:
- 25.2.1 Is the limit rationally connected with the objective?
- 25.2.2 Does the limit impair the right or freedom no more than is reasonably necessary for sufficient achievement of the objective?

⁹ Crimes Act 1961, s 98.

¹⁰ Parental Leave and Employment Protection Act 1987, s 31(3)(c).

¹¹ Coroners Act 2006, ss 13 and 14.

¹² *Hansen v R* [2007] NZSC 7 at [121].

25.2.3 Is the limit in due proportion to the importance of the objective?

Is the limitation justified and proportionate under s 5 of the Bill of Rights Act?

26. The objective of the definitions in the Bill is stated in terms of upholding legal certainty, protecting the integrity of sex-based rights, and ensuring that “language in law reflects biological reality” by providing “a clear and biologically grounded meaning of “woman” and “man” across legislation”. Legal certainty and the protection of rights are fundamental to the rule of law and promote fairness and confidence in the legal system.
27. The Bill appears to promote a view of human biology that may limit the rights of anyone who is not or may not be considered to be a “biological” man or woman. As already noted, public statements about the Bill have suggested that its objective is to provide sex-based protections and sex-based rights in relation to women’s sports, and changing rooms. These sorts of issues may be sufficiently important to justify some limit on human rights, as is already reflected in the Human Rights Act.
28. The age discrimination created by the definition of “woman” in the Bill appears unrelated to its stated objectives of upholding legal certainty, preserving sex-based rights and reflecting biological distinctions in law. As the purpose of this effect of the Bill is not explained and appears to be inadvertent, I cannot conclude that these provisions are rationally connected to an objective sufficiently important to justify discrimination on the ground of age.
29. The Bill’s approach of requiring a “woman” and “man”, but not a “male” or “female”, to be an “adult” could compound its arbitrary effects. For example, while the purpose of the Parental Leave and Employment Protection Act 1987 is to set minimum entitlements for female employees (of any age), other provisions in that Act which refer to women would only apply to people over 20.
30. The lack of rational connection may be considered a threshold issue which itself results in a conclusion of inconsistency with the Bill of Rights Act.¹³ Further, given my conclusion that any age-based discrimination created by the Bill appears to be inadvertent and arbitrary, I cannot conclude that it is a minimally rights-impairing or proportionate way of achieving the Bill’s policy objective.
31. Accordingly, I conclude that the Bill is inconsistent with the right to be free from discrimination on the grounds of age affirmed in s 19(1) of the Bill of Rights Act.

Sex discrimination

32. For completeness, I also considered whether the Bill gives rise to discrimination on the basis of sex that cannot be justified under s 5 of the Bill of Rights Act. The Bill of Rights Act affirms that everyone has the right to freedom from discrimination on the basis of sex, referring to s 21(1)(a) of the Human Rights Act 1993. “Sex” is not

¹³ *Hansen v R* [2007] NZSC 7 at [121].

defined in that legislation, other than to say that it includes pregnancy and childbirth.

33. Gender, including gender identity and gender expression, is not listed as a prohibited ground of discrimination in the Human Rights Act. Gender identity may include both a person's gender expression and the relationship between their gender identity and their sex assigned at birth.¹⁴
34. The Bill of Rights Act and the Human Rights Act also do not specifically state that having an innate biological variation of sex characteristics is a prohibited ground of discrimination.
35. In 2006, the Crown's position was that discrimination on the basis of gender identity was prohibited under the ground of sex, based on legal advice from Acting Solicitor-General Cheryl Gwyn.¹⁵ Successive governments have maintained this position, and that this protection extends to people with innate variation of sex characteristics.¹⁶ This position is also taken by the Human Rights Commission and some public sector agencies. It has formed the basis for government policy development across a range of areas.
36. However, the government's position on what is prohibited as discrimination on the ground of sex has not been directly addressed since 2006. Parliament has not seen fit to amend section 21(1)(a) of the Human Rights Act to further define sex, whether to include gender identity or otherwise, in the last twenty years. The matter is complex and contested. The Law Commission has recently released a report and recommendations,¹⁷ which the government has acknowledged but stated it will not be progressing at this time.¹⁸
37. This point has also not been authoritatively confirmed by a New Zealand court or tribunal. Some cases currently before the courts may provide further clarity. Related issues have, by contrast, been the subject of recent international case law. For example, in *For Women Scotland Ltd v Scottish Ministers* the United Kingdom Supreme Court determined that "sex" in the Equality Act 2010 (UK) was limited to a person's biological sex.¹⁹ However, the UK Act expressly recognises "gender

¹⁴ This draws from the recommended definition of gender identity in the 2025 Law Commission report *Ia Tangata*.

¹⁵ [Letter from Cheryl Gwyn \(Acting Solicitor-General\) to the Attorney-General regarding the Human Rights \(Gender Identity\) Amendment Bill \(2 August 2006\)](#).

¹⁶ Te Tāhū o te Ture | Ministry of Justice Proposals against incitement of hatred and discrimination (2021) at 23. See, also, Hon Mark Mitchell "Government response to the Petition of Rainbow Labour Christchurch Branch: Protect trans athletes' right to compete in publicly funded sports (J22, 26 February 2025) at [14]-[15] and [24].

¹⁷ New Zealand Law Commission *Ia Tangata: Protections in the Human Rights Act 1993 for people who are transgender, people who are non-binary and people with innate variations of sex characteristics* (NZLC R150, 2025).

¹⁸ Government Response to Law Commission Report on Protections In The Human Rights Act 1993 as presented to the Parliament, available at <https://www.lawcom.govt.nz/assets/Publications/GovtResponse/NZLC-Government-response-to-R150.pdf>

¹⁹ [2025] UKSC 16.

reassignment” as a distinct ground on which discrimination is prohibited, unlike the Human Rights Act.

38. I consider there is uncertainty about the legal effect of the Bill. For a number of provisions in legislation that refer to “man” or “woman” it is unclear whether, and if so, how the new definitions would apply. The principal Act creates default definitions, but in each particular instance the meaning will depend on the context of the legislation.
39. Further, the Bill does not define “biological” male or female, but these terms could be interpreted to exclude trans-identifying men and women. Because “biological” is not defined, it is not clear how the provisions would apply to people with innate variation of sex characteristics.
40. Finally, as noted above, there are relatively few provisions that refer to “man” or “woman”. The Bill does not affect the definition of “sex” or the framework of exceptions in the Human Rights Act, which sets out circumstances where it is permissible to distinguish on the basis of “sex”. Instead, it would affect only the limited number of statutes that use the words “woman” and “man” (or “male” and “female”).
41. Given that Parliament has not amended section 21(1)(a) of the Human Rights Act, and in the absence of judicial authority on the scope of the prohibition of discrimination on the ground of sex, and in light of the limited and uncertain legal effect of the Bill, I do not consider that there is a sufficient basis on which to conclude that the Bill would give rise to *prima facie* discrimination on the ground of sex.

Conclusion

42. For the above reasons, I have concluded the Bill appears to limit the right to be free from discrimination on the ground of age, affirmed in section 19(1) of the Bill of Rights Act, and the limit cannot be justified under s 5 of that Act.



Hon Chris Bishop

Attorney-General

19 May 2026