

DRAFT FOR CONSULTATION

Human Rights (Prohibition of Discrimination on Grounds of Gender Identity or Expression, and Variations of Sex Characteristics) Amendment Bill

Member's Bill

Explanatory note

General policy statement

The purpose of this Amendment Bill (**this Bill**) is to uphold Te Tiriti o Waitangi by taking steps towards ending discrimination against takatāpui and rainbow (LGBTIQ +) people.

The Human Rights Act 1993 (**the Act**) currently does not specifically protect against the intersectional discrimination experienced by trans, intersex or non-binary people. This Bill would rectify that by adding two new grounds to the list of prohibited grounds of discrimination in Section 21 of the Act: gender identity or expression, and variations of sex characteristics. This would ensure the human rights protections in the Act are extended to these communities and give them confidence to take cases to the Human Rights Commission.

This Bill would also contribute to redressing the impact colonisation has had on Māori. Historically, Te Ao Māori accepted those with diverse genders and sexualities as a normal part of society and acknowledged people with variations of sex characteristics as being sent to teach them. Colonisation resulted in suppression, criminalisation and pathologising of those people and resulted in takatāpui often not being accepted today. The mana of explicit human rights protections will help redress the historical trauma this has caused.

The Bill does not change the already existing grounds of discrimination of “sex” and “sexual orientation”. It only adds more provisions to better encompass people in communities that have historically and presently been discriminated against.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause and provides for the Bill to come into force on the day after Royal assent.

Clause 3 identifies the Human Rights Act 1993 as the Act being amended by the Bill (the **principal Act**).

Clause 4 amends section 21 of the principal Act to add gender identity or expression, and variations of sex characteristics as new prohibited grounds of discrimination.

Clause 5 makes provision for consequential amendments arising from the amendments to section 21 of the principal Act.

Clause 6 consequentially amends the Employment Relations Act 2000 to carry over the new grounds of discrimination into that Act.

Dr Elizabeth Kerekere

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Human Rights (Prohibition of Discrimination on Grounds of Gender Identity or Expression, and Variations of Sex Characteristics) Amendment Act **2021**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Principal Act

This Act amends the Human Rights Act 1993 (the **principal Act**).

4 Section 21 amended (Prohibited grounds of discrimination)

After section 21(1)(a), insert:

- (ab) gender identity or expression, which means the self-identified gender, name, pronoun, appearance, mannerisms or other gender-related characteristics of a person, with or without regard to the person's assigned sex at birth:
- (ac) variations of sex characteristics:

5 Consequential amendments to principal Act

Amend the principal Act as set out in the Schedule.

6 Consequential amendment to Employment Relations Act 2000

- (1) This section amends section 105 of the Employment Relations Act 2000.
- (2) After section 105(1)(a), insert:
 - (ab) gender identity or expression:
 - (ac) variations of sex characteristics:

Schedule

Consequential amendments to principal Act

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Section 2

In section 2(1), insert in its appropriate alphabetical order:

sex characteristics means a person's physical, hormonal, or genetic features relating to sex, including any of the following:

- (a) genitalia and other sexual and reproductive anatomy:
- (b) chromosomes:
- (c) genes:
- (d) hormones:
- (e) secondary sex characteristics.

Section 27

In section 27(2), after "sex," insert "gender identity or expression,".

In section 27(4), after "sex," insert "gender identity or expression,".

Section 45

In section 45, after "sex," insert "gender identity or expression,"

Section 59

In section 59, after "sex," insert "gender identity or expression,"