

Submissions on the Legislation (Definitions of Woman and Man) Amendment Bill

- 1 The Auckland Women Lawyers' Association (**AWLA**) makes these submissions in strong opposition to the Legislation (Definitions of Woman and Man) Amendment Bill (**Bill**) and recommends that it be withdrawn.
- 2 AWLA is a registered charity and representative organisation for lawyers identifying as women in the Auckland region. AWLA's constitution sets out the following objectives, inter alia:
 - (a) to make suggestions and work for the reform of the law and the administration of the law particularly as it affects women and children; and
 - (b) to participate as a body in matters of interest to the legal profession.
- 3 AWLA practices intersectional feminism and firmly considers that the term "women" is inclusive and includes transgender (**trans**) women. In drafting these submissions, AWLA does not purport to speak on behalf of the trans takatāpui and intersex community. Rather, AWLA seeks to support the Rainbow community, particularly the trans takatāpui and intersex community by committing itself to ensuring that all women are protected under the law and safe in the community.
- 4 The Bill purports to "ensure[s] clarity and consistency in New Zealand law by defining "woman" as "an adult human biological female" and "man" as "an adult human biological male", with corresponding definitions for "male" and "female". By establishing these definitions in the Legislation Act 2019, the Bill provides a clear and biologically grounded meaning of "woman" and "man" across legislation." Its purpose is stated to "uphold legal certainty, protect the integrity of sex-based rights, and ensure that language in law reflects biological reality."
- 5 Under the Bill, the definitions of man and woman will apply in all contexts where the term "man" and "woman" are used, unless explicitly stated otherwise in specific legislation.
- 6 AWLA submits that the Bill does not achieve its intended purposes and should be withdrawn for the following reasons:
 - (a) the Bill defines people based purely on ambiguous biological sex markers, which are in fact complex, arbitrary and insufficient to categorise members of the community in Aotearoa New Zealand;

- (b) the Bill falls short of the government's human rights obligations;
- (c) the Bill risks further harm to the Rainbow community and women;
- (d) the Bill restricts access to abortion, parental leave rights, and potentially other services;
and
- (e) there is no legal need for the Bill.

Biological sex markers are problematic

- 7 At the Bill's First Reading, NZ First MP Jenny Marcroft opined that the Bill would protect women's rights based on their biological sex and warned that "what it means to be a woman is under attack".¹ This ideology underpinning the Bill is harmful to women in that it reduces womanhood entirely to biology and anatomy. However, it is not the female body that creates vulnerabilities for women, but it is our social interpretation of the body and our preconceived biases and gender norms that are responsible.
- 8 Biology has been used to justify the narrative that women are 'natural caregivers' and that their responsibilities to provide unpaid care are therefore justified. This exploitation of female labour does not arise purely because women give birth. It arises because of social biases that create the link between the female body and gender norms.
- 9 The Bill does not recognise the complexities of the way biology intersects with culture and does not acknowledge the distinction between sex and gender. This distinction does not dismiss the biology of sex. Rather, it highlights the way social expectations and gender roles are constructed and perpetuated by sustained performance across generations until its origin as performance is erased and it becomes falsely grounded in biology.
- 10 By tying womanhood strictly to reproductive capacity, certain genitalia, or chromosomes, the patriarchal logic of "biology is destiny" is reinforced and ignores the specific struggles faced by women of colour, women with disabilities, and women with social and economic disadvantage.

¹ (20 May 2006) Hansard Parliamentary Debates (First Reading Legislation (Definitions of Woman and Man) Amendment Bill, Jenny Marcroft).

- 11 Furthermore, sex assigned at birth is not a perfect indication of physiology and anatomy. Many people are born intersex, some women possess XY chromosomes,² and changes to bodies over time, such as through hysterectomy or orchiectomy, will alter a person's sex-based anatomy. To categorise women solely by reference to arbitrary biological markers is overly simplistic and privileging biological markers above social markers poses no benefit – rather, a threat – to women.

Bill falls short of human rights obligations

- 12 The NZ Bill of Rights Act 1990 (**BORA**) and the Human Rights Act 1993 (**HRA**) protect the rights of people in Aotearoa New Zealand. The Human Rights Commission has long interpreted the prohibited ground of sex discrimination as being inclusive of gender identity, accepting complaints of discrimination from trans people on this basis, however the HRA also provides exceptions for single-sex spaces to exist, as discussed further below.
- 13 The Bill defines legal terms in a way that could affect the recognition, dignity and equal treatment of people whose sex characteristics and gender identity do not fit a strict binary model. The Select Committee should assess these effects by reference to evidence, human rights standards, and the lived experience of affected communities. This includes recognising that:
- (a) human rights belong to everyone, without exception;
 - (b) gender diversity is a normal part of human variation; and
 - (c) upholding the rights of trans, non-binary and intersex people strengthens equality and dignity for all.
- 14 The legal obligations of States to safeguard the human rights of minorities such as women and LGBTQI+ people are well established in human rights law. The Committee on the Elimination of Discrimination against Women (**CEDAW**) has also confirmed that protections for women include trans women.³ Reflecting this, during New Zealand's 2024 Periodic Review, it was recommended that New Zealand strengthen legal protections and promote equality relating to gender identity, gender expression and sex characteristics.

² Complete Androgen Insensitivity Syndrome (CAIS) is a condition where a person has female external genitalia and social identity, but possesses XY chromosomes, yet have a gene mutation that makes their body entirely unresponsive to androgens such as testosterone.

³ CEDAW *Flamer-Caldera v Sri Lanka* Communication 134/2018, UN Doc CEDAW/C/81/D/134/2018. See also: CEDAW *General recommendation No. 39 (2022) on the rights of indigenous women and girls*, which includes multiple references to indigenous trans and intersex women at [22] – [23](a) and [52](a).

Age discrimination

- 15 The Attorney-General has concluded that the Bill limits the right to freedom from discrimination under s 19 of BORA and that this limitation is not justified.⁴
- 16 This arises because the Bill defines “woman”, “female”, “man” and “male” as “adult” – which under the Age of Majority Act 1970 means person aged 20 years and over. This creates a risk that people under the age of 20 would be excluded from statutory protections and provisions referring to “women” or “men”, leading to material disadvantage.

Sex discrimination

- 17 The Attorney-General’s Report does not conclude that the Bill is inconsistent with BORA on the ground of sex, however this is premised on the uncertainty of the legal effect of the Bill.
- 18 The Bill’s immediate statutory effect may currently be limited because relatively few enactments use the terms it seeks to define (discussed further below). However, AWLA submits that legislation can have a normative effect beyond its direct legal operation, including by shaping public-sector policy, institutional practice and private conduct – which may enlarge the Bill’s human rights impacts beyond a strictly legislative environment. This wider effect should be considered by the Committee in its assessment of the Bill’s human rights impacts.
- 19 For example, it is unclear how the Bill interplays with the 2023 amendment to the Births, Deaths, Marriages, and Relationship Registration Act 2021 which recognises the right of self-identification and allows people to amend the sex on their birth certificate. That Act does not require anyone to treat a birth certificate as definitive proof of someone’s sex or gender but, rather, suggests that a certificate will be a permitted relevant consideration among “any other relevant information”: s 79(2). A registered sex can include any sex or gender permitted by regulation, which now includes “non-binary”.⁵ Registered sex is therefore not bound by a strict binary or biological understanding of sex or gender.
- 20 This begs the question as to how someone will be required to “prove” whether they are a man or woman if the Bill passes into law. AWLA is concerned that women and takutāpui will be

⁴ Report of the Attorney-General under the New Zealand Bill of Rights Act 1990 on the Legislation (Definitions of Woman and Man) Amendment Bill (2026) (**Attorney-General’s Report**).

⁵ Births, Deaths, Marriages, and Relationships Registration (Registering Nominated Sex) Regulations 2023.

disproportionately affected by breaches of their right to privacy if required to undergo physical or medical examinations to prove their biological sex.

Te Tiriti o Waitangi

- 21 Finally and importantly, takatāpui and other diverse identities have long existed within Te Ao Māori. Te Ao Māori perspectives on identity, community, and belonging may not align with the binary legal definitions that the Bill seeks to implement.⁶ A law which introduces a binary conception of gender without considering tikanga or indigenous identities and with likely discriminatory impacts is unlikely to be consistent with guarantees under Te Tiriti o Waitangi. The Committee should seek expert evidence on the Bill's consistency with Te Tiriti, and ensure the views of tangata whenua of diverse gender identities and variations of sex characteristics are meaningfully consulted in any recommendation it makes.

Bill risks further harm to trans community and women

- 22 AWLA is concerned that progressing the Bill, even to Select Committee stage, may legitimise exclusionary narratives and increase stigma for trans people in their whānau, workplaces, and communities. A recent study found that more than 80% of New Zealanders believe that trans people should be protected from gender discrimination.⁷
- 23 There are no national statistics or reliable trend estimates indicating that trans women are statistically significant perpetrators of violence against women. The Law Commission noted in a 2025 report, that it did not find any evidence to support concerns that were raised with it by some submitters that trans women pose a safety risk to cisgender women in women's refuges.⁸
- 24 Instead, research highlights that trans people, particularly trans women, experience disproportionately high rates of violence and sexual assault themselves, rather than being

⁶ Likewise, the definitions in the Bill may also cause erasure of certain other non-Western ways that gender is understood and practiced in or by some ethnic communities.

⁷ *Ipsos LGBT+ Pride 2023: a 30-Country Ipsos Global Advisor Survey (2023)* at [35] showing that 84 per cent of New Zealand respondents agreed that trans people should be protected from discrimination in employment, housing and access to businesses. See also the *National Council of Women of New Zealand Aotearoa New Zealand Gender Attitudes Survey 2025* (17 September 2025) which demonstrates survey respondents' increased levels of comfort with trans men and trans women on every measure in 2025 compared with the inaugural survey in 2017.

⁸ Te Aka Matua o Te Ture | Law Commission *Ia Tangata: Protections in the Human Rights Act 1993 for people who are trans, people who are nonbinary and people with innate variations of sex characteristics* (NZLC R150, 2025) at 134.

perpetrators.⁹ The New Zealand Crime and Victims Survey identifies that the vast majority of physical and sexual violence against women is committed by male partners or ex-partners. Up to one in three women will experience psychological or physical abuse from a male partner in their lifetime.

- 25 The National Collective of Independent Women’s Refuges has stated, in consultation with the Law Commission, that allowing trans women to stay in women’s refuges does not place cisgender women at risk of harm and that claims that it does are based on “harmful and baseless prejudice.”¹⁰
- 26 Additionally, focus on biological markers leads to increased surveillance and scrutiny of all women. Cisgender women who are gender non-conforming or simply may be subjectively masculine in appearance face discrimination, harassment or exclusion under such policies.

Bill restricts access to important rights and services

- 27 The impact of the Bill upon access for women to important rights and services is of grave concern to AWLA. The Bill defines “woman” as “adult” and according to the Age of Majority Act 1970, if “adult” isn’t defined, it’s considered someone who’s aged 20 or older. This means under 20s may be excluded from any legislation that mentions “women” or “men” without mentioning age.
- 28 The Contraception, Sterilisation and Abortion Act 1977 and Abortion Legislation Act 2020 outline how women can access abortion services. If the Bill passes, this could mean that women under 20, trans, and intersex people may not be able to access abortion services. Not only could this be problematic for people accessing a service to which they are entitled, it could also provide an opening for anti-choice groups to put abortion back up for debate.
- 29 The Attorney-General’s Report on the Bill suggests other possible restrictions including women under 20 no longer being eligible to apply to the Court for a declaration of paternity, and 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.

⁹ Counting Ourselves: The health and wellbeing of trans and non-binary people in Aotearoa New Zealand (2019 survey).

¹⁰ Te Aka Matua o Te Ture | Law Commission *Ia Tangata: Protections in the Human Rights Act 1993 for people who are trans, people who are nonbinary and people with innate variations of sex characteristics* (NZLC R150, 2025) at [11.67].

There is no legal need for the Bill

- 30 The HRA affirms that “sex” which includes pregnancy and childbirth is a prohibited ground of discrimination. Similar protections from sex-based discrimination are contained in the Equality Act 2010. Section 42 requires equal access of all members of the public to places, facilities and vehicles without discrimination. Section 44 prohibits discrimination on the basis of sex in the provision of goods, services or facilities to the public or any section of the public.
- 31 However, organisations are already permitted to provide services exclusively to cisgender women if that exclusion meets one of the exceptions in the HRA. Sections 43(1), 46, 47 and 49 create exceptions to those rules allowing for single-sex spaces to exist.
- 32 These exceptions show how New Zealand law has long permitted sex-segregated services and facilities in many of the circumstances motivating the concerns of supporters of the Bill.
- 33 The provisions of the Bill are incongruent with its stated purpose for the following reasons, which would pose significant interpretive and application challenges:
- (a) the proposed definitions are vague, not grounded in scientific evidence, and do not reflect the diversity (including biological and physiological diversity) of sex characteristics, gender identity, or lived experience. A rigid binary definition of terms such as “man” and “woman” risks undermining (not protecting) sex-based rights for some people;
 - (b) New Zealand legislation rarely uses the terms “man” and “woman”. The Legislation Design and Advisory Committee guidance is to use gender neutral terms in all drafting,¹¹ and section 15 of the Legislation Act 2019 provides that legislative references to a specific gender include others;
 - (c) while the Law Commission has identified that greater clarity is desirable in relation to the meaning of “sex” in the HRA, it did not identify widespread issues of legal uncertainty and did not recommend strict binary definitions of “man” and “woman”.
- 34 AWLA does not consider that the Bill identifies a genuine and real legislative uncertainty that requires resolution and submits that the Bill does not adopt a proportionate and rights-consistent method of resolving any alleged issues. There is a real risk that this Bill will create complexity

¹¹ Legislation Design and Advisory Committee Legislation Guidelines (2021).

without delivering a tangible benefit. Additionally, there is little evidence this Bill will advance the rights, opportunities, and well-being of women and girls in any way, shape or form.

- 35 The lack of demonstrated need for the Bill, and the many foreseeable issues it would seem to create, suggests secondary motivations to its purported purpose of protecting women's interests. Rather, it appears the Bill is a transparent attempt by NZ First to use trans persons and other vulnerable groups (including women) as an object of political debate, mirroring trends in American conservative politics.
- 36 Any law that is intended to create a framework used to isolate parts of the community based on perceived essential differences with an eye to removing them from public spaces is irreconcilable with liberal democracy. The Bill, especially when taken together with NZ First's proposed "Fair Access to Bathrooms Bill" is a clear and alarming attempt to lay a foundation to enable the exclusion of trans people from public spaces, drastically reducing their ability to exist as citizens in public.

Actions the government can take if it cares about protecting women

- 37 Claiming the Bill's intent is to protect women is difficult to reconcile with a government that has also slashed pay equity and cut funding to sexual violence prevention services, forcing them to close.
- 38 AWLA considers that the government's focus should be on the real challenges facing women today. This includes closing the gender pay gap so women are fairly recognised and rewarded in the workforce. It includes addressing issues of safety – particularly family and sexual violence – which continues to disproportionately affect women (including trans women). It includes improving access to health, childcare, and economic opportunities and resources so that women and girls can thrive.
- 39 The Bill provides a distraction from addressing and resourcing real measures that protect and promote human rights for gender minorities, including women. AWLA recommends that the government's focus is directed to evidence-based measures that address the causes and consequences of gender inequality (and inequity) and gender-based harm, including:
- (a) stable and adequate funding for prevention of gender-based violence;
 - (b) stable and adequate funding of support services for survivors of gender-based violence;
 - (c) access to equitable gender-sensitive healthcare;

- (d) removing existing barriers to access abortion and reproductive care;
- (e) addressing the increase in misogyny against women, including online;
- (f) expanding the eligibility of government-subsidized childcare programs;
- (g) responding to the 2024 recommendations of the CEDAW committee and implementing the Beijing Declaration and Platform for Action; and
- (h) implementing the recommendations of the Law Commission in *Ia Tangata*.

- 40 AWLA considers that measures such as these, directed towards evidence-based prevention, service access and economic equality, carry more impactful prospects for advancing the safety and wellbeing of women and girls.
- 41 Our laws play a powerful role in shaping how every person in Aotearoa New Zealand feels like they belong. When those laws recognise the diversity of people's lives and identities, they strengthen social cohesion and trust. When they do not, they risk signalling that some people are less worthy of recognition and protection.
- 42 The Bill does not achieve its stated purpose and creates complex and costly legal implications as well as sowing division. For the reasons set out above, AWLA strongly opposes the Bill and recommends that it is withdrawn.

Nāku noa, nā



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