





Equality Australia
ABN: 20 609 977 764
262 Liverpool St, Darlinghurst NSW 2010
info@equalityaustralia.org.au
equalityaustralia.org.au
Ph: (02) 7208 7922

 EqualityAustralia
 EqualityAU

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By email

Social Services and Community Select Committee

ssc.legislation@parliament.govt.nz

Dear Select Committee

Submission on the Legislation (Definitions of Woman and Man Amendment) Bill 2026

I am writing on behalf of Equality Australia to provide a brief submission on the above Bill, which would provide default biological definitions of “man” and “woman” defined on a biological basis across all statutes in New Zealand.

Equality Australia makes this submission on the basis of its extensive expertise in equality and anti-discrimination law in comparable common law jurisdictions, including New Zealand. While based in Australia, our work regularly engages with trans-national human rights frameworks, including the interpretation of sex, gender identity, and discrimination protections.

This Bill should not proceed

For 30 years, New Zealand law has recognised that trans people exist and has provided legal mechanisms to recognise their gender. Since 1995, trans people have been able to apply to change their birth certificate, with further amendments to simplify this process in 2023. Since 2012, the government has allowed a person to change their passport to reflect their gender. This Bill would reverse that long-established legal and administrative framework.

We reject the premise of this Bill, including the suggestion that it is needed to uphold women’s rights or resolve a genuine conflict of rights. Trans people have always existed and have long shared spaces with people who are not trans without requiring rigid or universal legal definitions of sex. In recent years, however, trans people have increasingly been drawn into a polarised political debate that has led to the development of Bills such as the one under this committee’s scrutiny.

Rather than providing clarity or legal coherence, the Bill would introduce rigidity, inconsistency, and legal risk into a system that already applies sexed terms in a carefully contextual and purpose-driven way.

While the second reading speech by Ms Jenny Marcroft MP describes the Bill as “common-sense” and a source of “clarity”, the effect would be the precise opposite. The Bill attempts to impose a single, context-free biological

definition of sex across all statutes, regardless of purpose, context, or existing legislative scheme. That approach is not how modern statutory interpretation operates in New Zealand or comparable jurisdictions.

Unclear consequences

The Bill proposes sweeping definitional changes without any accompanying audit of the consequences. Such a systemic amendment would normally require:

- a detailed review of all affected legislation
- assessment of unintended consequences across administrative, health, anti-discrimination, and criminal law contexts
- consultation with affected communities, including trans and intersex people
- transitional provisions to manage legal uncertainty.

None of these safeguards appear to be in place. It should not be the work of the community to find the problems with this approach and then educate the Committee about the risks – this should be the careful work of government.

The consequences of the Bill are also unclear because the concept it seeks to universalise “biological sex”, but this is not a single, fixed or self-evident legal category. It is not synonymous with sex assigned at birth or sex recorded at birth, which are administrative classifications made at a particular point in time for legal and evidentiary purposes.

In addition, biological characteristics are not static across a person’s lifetime for some individuals, including those who undergo medical interventions as part of gender affirming healthcare. However, access to or use of medical transition varies significantly and is not a relevant or consistent basis on which to determine legal status for trans people.

There is a good reason that legal sex in New Zealand law has not been confined to biological characteristics alone. Sex is a legal classification that operates differently depending on the context, and attempts to reduce it to a single biological definition risk producing arbitrary and unintended consequences for people who do not fit within strict binary assumptions.

How this Bill targets trans people

Although framed as merely providing “clear” definitions, the Bill would have direct and foreseeable negative consequences for trans people.

By displacing any contextual interpretations across the statute book, the Bill would effectively require decision-makers to treat sex as fixed, immutable, and exclusively biological in every legal context, regardless of purpose. This would undermine existing legal frameworks that already manage sex and gender identity in a nuanced way, including anti-discrimination protections, updating of identity documents such as birth certificates, and access to services.

In practice, this risks:

- increased exclusion of trans people from services and facilities
- confusion for public agencies required to apply overlapping legal regimes (birth certificates, discrimination law)
- greater inconsistency in administrative decision-making, particularly where legislation currently uses context-specific definitions or is silent on sex definitions
- heightened exposure of trans people to misclassification and denial of legal recognition in everyday settings.

Meanwhile, the debate around this Bill and others like it has had real-world impacts for trans people, contributing to dehumanising narratives in which trans identities are treated as something to be denied or legislated out of recognition, rather than as part of the rich diversity of the NZ community.

What the Bill means for intersex people

The Bill also fails to account for the existence of intersex people, whose sex characteristics do not fit neatly within binary biological categories.

By defining “female” and “male” solely by reference to “biological sex” without any clarification of what that means in cases of variation in sex characteristics, the Bill introduces ambiguity rather than resolving it. In practice, it risks:

- forcing medical or administrative authorities to make reductive determinations about people based on limited or outdated criteria, e.g. Y chromosome always means “male”
- undermining recognition of innate variations of sex characteristics that are already acknowledged in medical and human rights frameworks
- people being arbitrarily reclassified as female or male, despite their registered sex, and regardless of how they have been recognised since birth.

For example, a person may be observed and recorded as female at birth and live throughout their life as a woman, only later discovering through medical testing that they have a Y chromosome. The Bill does not explain how such cases are to be classified, and it is unclear whether “biological woman” would be determined by chromosomes, anatomy, hormone response, or a combination of these factors.

Why the Bill is unnecessary

As noted by the Minister for Women, Hon Nicola Grigg, during the second reading debate, most New Zealand laws are already gender-neutral, and where sex-specific language is used, it is typically limited to narrow contexts such as pregnancy, reproduction, or sex-specific health considerations.

This raises a fundamental question: what problem is the Bill actually solving?

There is no demonstrated legislative gap presently requiring a broad definitional override across all statutes. In fact, the overwhelming majority of laws do not rely on standalone definitions of “man” or “woman” at all. Where sex is relevant, courts and decision-makers already interpret those terms in context, consistent with legislative purpose and established principles of statutory interpretation.

The Minister’s own response acknowledged that it is not clear the Bill would deliver any additional rights or opportunities for women and girls, while agreeing to support its consideration by this Committee. That concession is significant. It is clear that that the Bill is not a targeted solution to a defined legal problem, but a symbolic intervention that risks destabilising existing legal coherence across all NZ laws.

Reducing protections from sexism and transphobia

The *Human Rights Act 1993* does not generally rely on the terms “woman”, “man”, “female” or “male”. Instead, it prohibits discrimination on the basis of “sex”. The Bill therefore raises an important question: if Parliament intends “woman”, “man”, “female” and “male” to be understood solely by reference to biological characteristics, will courts be expected to interpret “sex” in the same way?

If so, this risks narrowing existing understandings of sex discrimination, which would be mostly to the detriment of women and girls who experience sexism and misogyny the most.

Sex discrimination does not occur only because of a person's anatomy, chromosomes or hormones. More commonly, it occurs because of assumptions, stereotypes and expectations associated with being perceived as a woman or a man.

Courts in New Zealand, Australia and other comparable jurisdictions have long recognised that discrimination based on sex includes discrimination arising from gendered assumptions and stereotypes. This reflects the reality that sexism operates through social expectations about how women and men should look, behave, dress, work and participate in society.

Examples of sex discrimination include:

- A school requiring girls to study home economics, and boys to study industrial arts.
- Requiring all partners in a law firm to work full time, even though women are more often carers for children.
- Telling a man that he can't wear an earring to work, whereas women can wear earrings in the same workplace.
- Exposing female workers to a workplace where there are misogynistic comments, sexist posters and graffiti.

None of these forms of discrimination arise because of a person's chromosomes, hormones or reproductive anatomy.

Therefore, by requiring that legal concepts relating to women, men, females and males should be understood exclusively through a biological lens, the Bill risks creating uncertainty about the scope of existing protections against sex discrimination for everyone in NZ.

For trans people, it may remove discrimination protections entirely. Because the *Human Rights Act 1993* does not have a separate gender identity protection, trans people may no longer be able to rely on the sex attribute for protection from transphobic treatment. A Crown Law opinion from 2006 has clarified that discrimination on the grounds of sex does include gender identity, based on international jurisprudence, but it is unclear whether this would hold with the proposed changes in the Bill.¹

Inconsistency with human rights legislation

The Bill also raises serious human rights concerns under the New Zealand *Bill of Rights Act 1990* (NZBORA) and the *Human Rights Act 1993*.

Firstly, the right to freedom from discrimination under section 19 of NZBORA is engaged, read together with the prohibited grounds of discrimination under the *Human Rights Act 1993*, which includes sex and, in practice, covers discrimination on the basis of gender identity. A statutory framework that increases misclassification of individuals into a different sex category, or denial of legal recognition, will lead to discriminatory outcomes in many areas of public life. The exception for special measures in 19 (2) is not engaged because the Bill does not take a proportionate approach that is rationally connected to measures to advance equality of opportunity for any disadvantaged group.

Secondly, the Bill limits the right to freedom of expression under section 14 of NZBORA. One of the ways people express themselves is through their gender expression, including their name, appearance, clothing and presentation. Insisting that self-identification of gender must always yield to a rigid biological classification means that trans people are discouraged from openly and safely expressing their identity in public life.

¹ Te Tari Ture o te Karauna Crown Law, *Human Rights (Gender Identity) Amendment Bill* Our Ref: ATT395/9 (2 August 2006) - <https://www.beehive.govt.nz/sites/default/files/SG%20Opinion%202%20Aug%202006.pdf>

Thirdly, removal of legal recognition is likely to result in serious humiliation, loss of dignity, or significant psychological harm, and therefore section 9 of NZBORA (freedom from inhuman or degrading treatment) may also be engaged.

Fourthly, while the NZBORA does not contain a separate right to privacy or bodily autonomy, both rights are recognised under international human rights instruments to which New Zealand is a party, including the *International Covenant on Civil and Political Rights*. The Bill makes legal status dependent upon "biological sex" without explaining how that concept is to be determined in practice. For some trans and intersex people, this may require scrutiny or disclosure of highly personal information about their anatomy, chromosomes, hormones or medical history in order to establish whether they are legally recognised as a woman or a man. Such an approach risks undermining privacy, dignity and personal autonomy, while encouraging intrusive examination of characteristics that would otherwise remain private.

Conclusion

In summary, the Bill is fundamentally misconceived and not capable of being amended to resolve the issues raised above. We therefore respectfully ask the Committee to recommend that it does not proceed further through the parliament.

Thank you for the opportunity to make this submission.

If you have any questions regarding these points, please do not hesitate to contact our Legal Director, Heather Corkhill on +61 406 829 898 or at heather.corkhill@equalityaustralia.org.au.

Kind regards,



Heather Corkhill
Legal Director
Equality Australia