

Submission to the Justice Select Committee on the:

## **(Definitions of Woman and Man) Amendment Bill**

Submitted by the Out at Work Council of New Zealand Council of Trade Unions Te Kauae Kaimahi

26 June 2026



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This submission is made on behalf of the 32 unions affiliated to the New Zealand Council of Trade Unions Te Kauae Kaimahi (NZCTU). With over 370,000 union members, the NZCTU is one of the largest democratic organisations in New Zealand.

The NZCTU acknowledges Te Tiriti o Waitangi as the founding document of Aotearoa New Zealand and formally acknowledges this through Te Rūnanga o Ngā Kaimahi Māori o Aotearoa (Te Rūnanga), the Māori arm of Te Kauae Kaimahi (NZCTU), which represents approximately 60,000 Māori workers.

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## Executive summary

1. This submission is made by the Out@Work Council of the New Zealand Council of Trade Unions Te Kauae Kaimahi (NZCTU), on behalf of the NZCTU.
2. The NZCTU strongly opposes the Legislation (Definitions of Woman and Man) Amendment Bill.
3. Although presented as a clarification measure, the Bill introduces a substantive and restrictive definition of sex that explicitly excludes gender identity from legal recognition across all legislation.
4. The Bill would:
  - Undermine the rights, safety, and dignity of LGBTQIA+ workers, particularly transgender, non-binary, and intersex people.
  - Create inconsistencies with the Human Rights Act 1993 and the Employment Relations Act 2000.
  - Give rise to potential breaches of the New Zealand Bill of Rights Act 1990, particularly section 19 (freedom from discrimination).
  - Place New Zealand at odds with international human rights and labour standards, including the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111).
5. The Bill is a regressive step that risks increasing discrimination, creating legal uncertainty, and undermining inclusive workplace practices.
6. The Out@Work Council recommends that the Bill be rejected in its entirety.

## 1. Introduction

7. The Out@Work Council is the representative body for rainbow workers within the NZCTU. We advocate for equitable, safe, and inclusive workplaces for all workers in Aotearoa New Zealand.
8. This submission is made in that capacity, with a particular focus on the impact of the Bill on workers' rights, workplace safety, and equality protections.
9. The Bill defines “woman” and “man” solely as biological categories “regardless of gender identity”, applying this definition across all legislation.
10. This approach removes legal recognition of gender identity and introduces significant risks to both individual rights and the functioning of employment law frameworks.

## 2. Impact on employment and human rights frameworks

### ***Human Rights Act 1993***

11. The Human Rights Act 1993 prohibits discrimination on the grounds of sex.
12. In practice, this has been interpreted to include gender identity and gender expression, including through Human Rights Review Tribunal decisions.<sup>1</sup> As per Crown Law opinion on transgender discrimination in 2006, Attorney-General Cullen stated: “I note that Crown Law states that “there is currently no reason to suppose that “sex discrimination” would be construed narrowly to deprive transgender people of protection under the Human Rights Act”.
13. The Bill risks narrowing the scope of these protections by imposing a rigid statutory definition that excludes gender identity.
14. This creates tensions between statutory interpretation and enforcement mechanisms, potentially undermining the effectiveness of New Zealand’s primary anti-discrimination framework.

### ***Employment Relations Act 2000***

15. The Employment Relations Act 2000 is founded on the principle of good faith and requires employers to maintain fair and inclusive workplaces.
16. The Act draws its prohibited grounds of discrimination from the Human Rights Act (with the addition of union membership). As a result, any narrowing of the interpretation of “sex” risks flowing through into employment law.
17. The Bill would create uncertainty for employers and unions in interpreting obligations relating to workplace policies and procedures; access to facilities; and recognition of identity.
18. This risks increased disputes and inconsistent application of employment protections, contrary to the Act’s purpose.

### ***Health and Safety at Work Act 2015***

19. Employers (PCBUs) are required to ensure, so far as reasonably practicable, the physical and psychological safety of workers.
20. As the 2022 Counting Ourselves survey<sup>2</sup> finds, transgender and non-binary people already experience significant barriers to safe participation in workplaces:
  - 47% of participants said they worried that job interviewers would discriminate against them if they realised they were trans or non-binary.

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<sup>1</sup> 2006 Crown Law Opinion, <https://www.beehive.govt.nz/release/crown-law-opinion-transgender-discrimination>

<sup>2</sup> Counting Ourselves, 2022 Survey Report, <https://countingourselves.nz/2022-survey-report/>

- The median annual income of participants, from all sources, was \$20,001–\$25,000. Nearly two-thirds of participants (62%) had an annual income less than the median income for the general population (\$40,001–\$50,000) in the 2021/22 New Zealand Health Survey.
- More than two in five participants had avoided gender-segregated exercise or recreational sport because they didn't know if trans and non-binary people were welcome (45%), or because they had concerns about accessing a bathroom or changing room (43%).
- 43% of participants had often or always avoided public bathrooms in the last year because they were afraid of problems as a trans or non-binary person, which was an increase from the survey undertaken in 2018 (33%).

21. Excluding gender identity from legal recognition increases the risk that transgender workers may be placed in unsafe environments; subjected to harassment or exclusion; or denied appropriate workplace accommodations.

22. This is inconsistent with statutory obligations to safeguard worker wellbeing.

### ***Impact on intersex people***

23. The Bill's definition of "woman" and "man" as fixed biological categories fails to account for the existence of intersex people, who are born with sex characteristics that do not fit typical binary definitions of male or female.

24. By embedding a strict binary definition of sex across all legislation, the Bill effectively removes intersex people from legal recognition.

25. This has significant implications: it denies recognition of natural biological diversity; it forces intersex individuals into categories that may not reflect their bodies; and it risks reinforcing stigma, invisibility, and discrimination.

26. Intersex people already experience marginalisation within legal, medical, and social systems. A legislative definition that does not recognise their existence compounds this harm.

27. A definition of sex that excludes a recognised group of people does not provide clarity; it introduces inaccuracy into law.

## **3. New Zealand Bill of Rights Act 1990 analysis**

### ***Section 14 – Freedom of Expression***

28. Section 14 of the NZBORA affirms the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind.

29. This protection extends beyond verbal expression. It includes the ability of individuals to express their identity, including gender identity, through name, appearance, dress, and social participation.
30. By removing legal recognition of gender identity and imposing rigid biological definitions, the Bill risks limiting the ability of transgender and non-binary individuals to express their identity safely and openly, particularly in workplaces and public life.
31. In practice, this may create a chilling effect, where individuals feel unable to express their identity at work; face pressure to conceal or suppress aspects of who they are; and experience increased risk of scrutiny, discrimination, or exclusion.
32. While the Bill does not directly prohibit expression, its legal framework undermines the conditions necessary for meaningful and safe expression, which is central to the purpose of section 14.
33. Accordingly, the Bill engages section 14 rights and contributes to a broader pattern of limiting the dignity, participation, and visibility of marginalised groups.

### ***Section 19 – Freedom from Discrimination***

34. Section 19 affirms the right to freedom from discrimination on the grounds set out in the Human Rights Act.
35. By defining sex in a manner that excludes gender identity, the Bill creates differential treatment based on gender identity.
36. This constitutes a prima facie limitation on section 19 rights, as it denies equal recognition and protection under the law.

### ***Section 5 – Justified Limits***

37. Section 5 establishes that the rights and freedoms protected by the NZBORA can only be subject to limits that can be “demonstrably justified in a free and democratic society”.
38. The Bill fails the proportionality test. Its aim of promoting “clarity and consistency” lacks an evidentiary foundation, as there is no demonstrated legal uncertainty to justify limiting rights.
39. There is also no rational connection between the aim and the means: a rigid biological definition is unnecessary, poorly tailored, and likely to create inconsistency. The Bill also fails to meet the minimal impairment threshold, imposing a broad restriction despite less restrictive alternatives.
40. The Bill erases intersex persons from legal recognition by forcing individuals into a binary framework that conflicts with established medical and legal understandings. It risks stripping intersex individuals of protections and equal benefit of the law, undermining their legal personhood and encroaching on fundamental rights.

41. The measure is also disproportionate in its effects. There are no offsetting benefits to the foreseeable harm – including stigma, exclusion, and unequal treatment of LGBTQIA+ and intersex individuals.
42. The limitation is therefore not demonstrably justified in a free and democratic society and is inconsistent with principles of equality and non-discrimination. Accordingly, the Bill is likely to impose an unjustified limitation on section 19 rights.

### **Judicial context**

43. In *Taylor v Attorney-General*, the High Court confirmed that legislation may be formally recognised as inconsistent with the rights affirmed in the NZBORA.<sup>3</sup> This underscores that, while Parliament retains legislative supremacy, enactments that unjustifiably limit protected rights carry significant constitutional implications.
44. In *Attorney-General v Family First New Zealand*, the Supreme Court emphasised that legislation should, where possible, be interpreted consistently with fundamental rights and freedoms.<sup>4</sup> This reflects a well-established interpretive principle that statutory provisions ought to be read in a manner that supports, rather than restricts, human rights protections.
45. Together, these authorities highlight that legislation which narrows the scope of recognised rights, particularly for vulnerable groups, creates a material risk of inconsistency with NZBORA and undermines the integrity of New Zealand’s rights framework.

## **4. International obligations and case law**

### **International labour standards**

46. New Zealand is bound by International Labour Organization (ILO) standards, including the Discrimination (Employment and Occupation) Convention No. 111, which is one of the eight fundamental conventions of the ILO. .
47. These require elimination of discrimination and promotion of equality in employment.
48. Excluding gender identity from legal recognition is inconsistent with the evolving international interpretation of discrimination.

### **United Nations Human Rights Framework**

49. New Zealand is a party to the International Covenant on Civil and Political Rights (ICCPR) and supports the Universal Declaration of Human Rights (UDHR), which guarantees equality, dignity, and non-discrimination.

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<sup>3</sup> *Taylor v Attorney-General* [2015] NZHC 1706 - New Zealand Bill of Rights Act 1990.

<sup>4</sup> *Attorney-General v Family First New Zealand* [2022] NZSC 80 - (NZBORA s 6 principle).

50. In *Toonen v Australia*, the UN Human Rights Committee confirmed that discrimination protections must be interpreted broadly.<sup>5</sup> The decision in *Toonen v Australia* demonstrates that laws regulating sex, sexuality, and gender can be inherently negative because the UN Human Rights Committee adopted a broad interpretation of discrimination, confirming that protections extend beyond explicit categories to include sexual orientation. By recognising that criminal laws targeting homosexual conduct constituted arbitrary interference with privacy and were incompatible with equality principles, the Committee showed that such laws stigmatise and disadvantage individuals, reinforcing discrimination and harmful social attitudes rather than serving legitimate purposes.

### ***Comparative jurisprudence***

51. International courts increasingly recognise gender identity as integral to human rights protections:

- *Goodwin v United Kingdom* (European Court of Human Rights) – legal recognition of gender identity is required to protect dignity and privacy.<sup>6</sup>
- *AP, Garçon and Nicot v France* (European Court of Human Rights) – rigid biological requirements violate human rights.<sup>7</sup>
- *Bostock v Clayton County* (Supreme Court of the United States) – discrimination based on transgender status is discrimination “because of sex”.<sup>8</sup>

52. The Bill departs from this well-established global trajectory.

## **5. Broader policy concerns**

### ***Broader impacts across other legislation***

53. The Bill applies across all legislation, creating unintended and wide-ranging consequences in employment, health, and social policy.

54. In the employment context, this may undermine the application of anti-discrimination protections under the Human Rights Act 1993 by narrowing how “sex” is interpreted.

55. In relation to workplace health and safety, although the Bill does not directly regulate workplace facilities or practices, it risks influencing how employers interpret their obligations under the Health and Safety at Work Act. In particular, the introduction of a rigid statutory definition of sex may be relied upon by some employers to justify less inclusive practices or decisions, particularly where they are uncertain about their legal position. This creates a risk that:

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<sup>5</sup> *Toonen v Australia* (1994) UN Human Rights Committee, Communication No 488/1992

<sup>6</sup> *Goodwin v United Kingdom* (2002) 35 EHRR 18.

<sup>7</sup> *AP, Garçon and Nicot v France* (2017) ECHR 338.

<sup>8</sup> *Bostock v Clayton County* 590 US SC (2020)

- Employers may take a more restrictive approach to workplace inclusion, believing it is supported by statute.
- Transgender workers may experience reduced access to inclusive practices that support psychological safety.
- Existing efforts to prevent bullying, harassment, and exclusion may be weakened in practice.

56. For example, an employer considering how to manage access to gendered facilities or workplace accommodation may rely on the statutory definition to support a narrower approach, rather than adopting inclusive practices aligned with health and safety obligations to minimise psychosocial harm.

57. Although the Bill does not compel such outcomes, it creates a legal and normative environment in which they are more likely to occur, particularly among risk-averse or poorly informed employers.

58. In the health sector, the Bill could:

- Create barriers to accessing gender-affirming healthcare services.
- Introduce inconsistency in clinical record-keeping and service provision.
- Undermine policies that rely on recognition of gender identity to provide appropriate and respectful care.

59. In social policy and public services, the Bill may:

- Restrict access to gender-specific services such as refuges, housing support, and correctional placements.
- Create uncertainty in the administration of education policies relating to student wellbeing and inclusion.

60. More broadly, the Bill risks creating systemic inconsistency across the statute book, as agencies, employers, and courts attempt to reconcile new restrictive statutory definitions.

61. Rather than promoting clarity, the ripple effects of the bill are likely to generate significant legal uncertainty, operational complexity, and increased dispute risk across multiple sectors.

### ***Lack of evidence***

62. No evidence has been provided demonstrating a problem requiring legislative intervention of this scale.

### ***Impact on workers***

63. LGBTQIA+ workers already experience higher rates of discrimination and disadvantage.

64. Removing legal recognition exacerbates these inequities and undermines workplace inclusion.

## 6. Conclusion

65. The Bill represents a significant departure from New Zealand's established legal and human rights framework.

66. It would:

- Undermine workplace protections.
- Increase discrimination risk.
- Create legal inconsistency.
- Conflict with international obligations.

67. It is incompatible not only with the core principles of the union movement, equity, dignity, and solidarity, but also with the foundational values of an inclusive Aotearoa New Zealand, which require fairness, equal recognition before the law, and respect for the dignity of all people.

68. There is no credible evidence that the inclusion and acceptance of marginalised groups causes harm to society. To the contrary, inclusive legal and social frameworks are associated with stronger social cohesion, improved public health outcomes, and greater economic participation. By contrast, exclusionary measures that deny recognition and dignity contribute to stigma, discrimination, and division. They undermine trust in institutions, weaken social cohesion, and impose measurable costs on society through poorer health, reduced workforce participation, and increased inequality. The costs of exclusion are not borne solely by those directly affected; they are experienced across all of our society.

69. Any legislation that achieves “clarity” by excluding a recognised group of people does not strengthen the law; it weakens it by embedding inaccuracy and exclusion at its core.

## 7. Recommendation

70. The Out@Work Council of the NZCTU recommends that the Legislation (Definitions of Woman and Man) Amendment Bill is **rejected in its entirety**.

71. We urge Parliament to instead continue strengthening inclusive, rights-based protections for all workers in Aotearoa New Zealand.

**For further information, please contact**

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