

# Legislation (Definitions of Woman and Man) Amendment Bill

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Submission of the New Zealand Law Society Te Kāhui  
Ture o Aotearoa

1 July 2026

## 1 Introduction

- 1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Legislation (Definitions of Woman and Man) Amendment Bill (**Bill**).
- 1.2 This submission has been prepared with input from the Law Society's Human Rights and Privacy Committee.<sup>1</sup>
- 1.3 The Law Society **wishes to be heard** on this submission.

## 2 General comment

- 2.1 The Law Society is the statutory body, established in 1869, that regulates New Zealand's lawyers. One of its statutory functions is to "assist and promote, for the purpose of upholding the rule of law and facilitating the administration of justice in New Zealand, the reform of the law".<sup>2</sup> The Law Society makes submissions on legislative design and points of legal concern, and seeks to assist in the production of quality legislation that will advance the rule of law, observe constitutional principle and conform with established legislative standards. It carries out this work in the public interest.
- 2.2 The Law Society is aware there has been for some time debate both here and overseas as to the entitlement of people who are born with a particular biological sex to identify themselves as having a different gender identity (e.g. a person born a biological male identifying their gender identity as a woman) and, based on that identity, seeking to access services dedicated to persons identified by a reference to one sex or another.
- 2.3 It is not part of the Law Society's function to comment on the answer to this debate. However, it is a part of the Law Society's function to advocate that:
  - (a) any legislative initiative in this area should be clear as to its purpose, its intended effects, and the language it uses in order to do so; and
  - (b) any legislation should comply with human rights obligations.
- 2.4 The Law Society's submission on the Bill is based on its experience in dealing with legislation. The quality and clarity of legislation is of great importance to society. Poor legislation leads to uncertainty, costly disputes and unintended outcomes. The Law Society considers, for the reasons set out in this submission, that there is no legal uncertainty that would be cured by the Bill. On the contrary, the Bill would create uncertainty and perverse outcomes across New Zealand's corpus of statute law. The Law Society submits that, for those reasons, the Bill should not proceed. If it is to proceed, a detailed review of the statutes affected by the Bill should be carried out and amendments made to those statutes.

## 3 What is the purpose of the Bill?

- 3.1 The general policy statement of the Bill says that its purpose is to:

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<sup>1</sup> More information about the Law Society's law reform sections and committees is available on the Law Society's website: [NZLS | Law reform committees](#).

<sup>2</sup> Lawyers and Conveyancers Act 2006, s 65(e).

- (a) establish definitions of the terms woman and man that provide a clear and biologically grounded meaning of woman and man across legislation;
- (b) uphold legal certainty;
- (c) protect the integrity of sex-based rights;
- (d) ensure that language in law reflects biological reality; and
- (e) ensure that in all contexts where the terms woman and man are used, the definitions of woman and man set out in the Bill are used, unless explicitly stated otherwise in specific legislation.

3.2 The proponent of the Bill has said that protecting sex-based rights does not mean denying the rights of others to live free from harassment or discrimination; those protections already exist.

## 4 The Law Society's substantive comments

### *Purpose of the Bill not established*

4.1 In the Law Society's submission, the Bill does not increase legal certainty.

4.2 **First**, a preliminary survey of New Zealand's case law does not reveal any judgments in which the terms "woman", "man", "female" or "male" caused confusion. A search of the LexisNexis database for cases considering the phrases "woman", "man", "female" or "male" finds six results. Three relate to "battered woman's syndrome", one to the term "middle men", and one (*Birley's Case*, from 1889) to the unlawful employment of a female "during ... the time allowed for meals" in breach of the (now-repealed) Employment of Females and Others Act 1881. None reveals any legal uncertainty as to the meanings of the terms the Bill proposes to define.

4.3 **Second**, as the Minister for Women noted in the Parliamentary Debate, New Zealand legislation has, over time, moved away from the use of gender-specific language. Most modern legislation uses gender neutral language such as "person" and makes use of personal pronouns collectively (e.g. "[e]very person has the right to manifest that person's religion or belief"<sup>3</sup> or "[e]veryone has the right to freedom of expression"<sup>4</sup>).

4.4 The Law Society observes, in that context, that:

- (a) As the Attorney-General observed in his report on the Bill under section 7 of the New Zealand Bill of Rights Act 1990:<sup>5</sup> in line with standard gender-neutral drafting practice in recent decades the terms "woman" and "man" appear relatively rarely in legislation.<sup>6</sup> To the extent they are used, they are found predominantly in older legislation. It is difficult to see, therefore, when and how often the Bill would be applicable in respect of the definition of "woman" and "man".

<sup>3</sup> New Zealand Bill of Rights Act 1990, s 15.

<sup>4</sup> New Zealand Bill of Rights Act 1990, s 14.

<sup>5</sup> "Report of the Attorney-General under the New Zealand Bill of Rights Act 1990 on the Legislation (Definitions of Woman and Man) Amendment Bill" (19 May 2026).

<sup>6</sup> Attorney-General's report at [11].

- (b) There are more instances of legislation (both Acts and Regulations) using “female” and/or “male” in relation to humans.<sup>7</sup> This ranges from, for example, the Corrections Act 2004<sup>8</sup> and Corrections Regulations 2005,<sup>9</sup> to the Parental Leave and Employment Protection Act 1987<sup>10</sup> and the Crimes Act 1961.<sup>11</sup>

4.5 **Third**, the proposed new definitions risk creating uncertainty in three ways:

- (a) The effect of the Bill will be to introduce new definitions across New Zealand’s corpus of statutory law. It is difficult to assess the impact of that change, which will vary from statute to statute, although some of those effects are discussed below in the context of the use of the word “adult” in the definitions.
- (b) The Bill does not define what is meant by “biological sex”. There does not appear to be a consensus view as to what this is or how it could be assessed (although that will be a matter for the Select Committee to consider in the light of the medical and scientific evidence).
- (c) The Bill does not make provision for intersex or non-binary persons.

4.6 As a result, in the Law Society’s submission:

- (a) it is not clear what legal uncertainty the Bill is intended to address; and
- (b) paradoxically, the Bill risks creating uncertainty because the practical effect of the Bill on the statute book is unclear. Without a reasonable survey of the statute book to understand its effect, the Law Society’s submission is that the Bill ought not to proceed.

#### *Confusing relationship with Legislation Act 2019*

4.7 The Bill’s interaction with the Legislation Act 2019 is confusing. It is not clear how the new definitions of “woman” and “man” (to be inserted as new sections 13A and 13B of the Legislation Act) will interact with section 16 of that legislation, which provides that “words denoting a gender include every other gender”.

4.8 Put more concretely, is the term “woman” a word that denotes gender? If it is, then the effect of section 16 of the Legislation Act is that, on its own terms, the definition of “woman” will include every other gender including “man”. That would appear to defeat the distinction drawn in the Bill. The alternative — to repeal section 16 — risks producing the unintended consequence that references to either gender in New Zealand’s statute book will henceforth exclude the other gender.

#### *Discrimination*

4.9 Two discrimination issues arise on the terms of the Bill.

<sup>7</sup> There are also instances of Acts and Regulations using these terms in relation to non-human species. It would appear these are not likely to be affected by the Bill, given the Bill is directed at humans, rather than other species.

<sup>8</sup> ss 81A, 81C, 94A, 202–203.

<sup>9</sup> regs 65–65C.

<sup>10</sup> ss 1A, 7, 9, 13–16, and 49.

<sup>11</sup> s 194.

- 4.10 **First**, while the proponent of the Bill has clearly expressed her intention that the Bill is not intended to result in discrimination against people whose gender identity differs from their biological sex, nothing in the Bill expressly puts that issue beyond doubt. It can be anticipated that some people will rely on the definitions of woman and man in the Bill to argue that the concept of “sex” in the Human Rights Act 1993 — in particular, in section 21(1)(a), which lists the prohibited grounds of discrimination — should **not** extend to people whose gender identity does not match their biological sex.
- 4.11 In 2006, the Solicitor-General advised that the concept of “sex” in the Human Rights Act 1993 prohibited discrimination on grounds of gender identity.<sup>12</sup> Because the stated aim of the Bill is described at a very abstract level, whereas the Hansard debates refer more specifically to matters such as women’s rights and women’s safe-spaces, there is a risk that a particular facility’s manager could be persuaded that the term “sex” in the Human Rights Act 1993 is confined to the concepts of man and woman as defined in the Bill. As a result, far from providing legal certainty and clarifying the law, the Bill risks introducing uncertainty. In light of the Bill’s more general flaws, this is another reason the Bill should not proceed.
- 4.12 **Second**, the proponent of the Bill intends to protect women and girls (see Hansard), yet the terms of the Bill only provide its benefit (whatever that may be) to adult women. The Law Society agrees with the Attorney-General’s reasons for concluding that the Bill limits section 19 of the New Zealand Bill of Rights Act 1990 (**Bill of Rights**), in particular the right to be free from discrimination on the basis of age, and cannot be justified under section 5 of the Bill of Rights. Plainly, by defining the terms man and woman by reference to adulthood, those definitions discriminate between men and women aged 20 or more and men and women aged under 20. No basis for treating those groups differently on the basis of age has been provided.
- 4.13 Examples of the possible effect of confining the definitions to persons aged 20 years or more are:
- (a) Under sections 10–13 of the Contraception, Sterilisation, and Abortion Act 1977 (**CSAA**), abortion services are available to “women”. Following the Bill, and failing amendment of the CSAA, persons under the age of 20 would not be able to access abortion services.
  - (b) Under section 3 of the Search and Surveillance Act 2012, strip searches are defined to include uncovered breasts in the case of “a female”. For persons under the age of 20, any search of their uncovered breasts would not be considered a strip search, and accordingly the protections afforded by the Act (and guidelines made under the Act) would not apply. The Law Society notes that the same point would apply to persons with breasts who do not meet the definition of a “biological female”.
  - (c) Under section 194 of the Crimes Act, assault by a male person on a female person attracts a punishment of up to 2 years’ imprisonment. Under the definitions in the Bill (assuming the assault did not occur within a family relationship), an

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<sup>12</sup> Solicitor-General’s opinion on the Human Rights (Gender Identity) Amendment Bill (2 August 2006).

assault on a woman under the age of 20 and over the age of 14 could not be brought under this provision. It would instead be brought under section 196, and would attract only a 1 year maximum sentence.

- (d) The position under the Crimes Act has flow on effects in respect of the Bail Act 2000, where section 7(2)(a) provides that charges under section 194 are an exception to the general rule that a defendant is bailable as of right for charges where the maximum penalty is 3 years or less. Accordingly, a man who assaults a woman under the age of 20 will be bailable as of right, instead of needing to apply for bail as a consequence of section 7(2)(a).
- (e) Under reg 24 of the Corrections Regulations 2005, corrections staff must ensure that male and female prisoners are escorted separately, but the Bill would see this not apply to prisoners under the age of 20 years. In addition, under reg 175, a female prisoner is able to apply to keep with them their child that is less than 24 months old. But, under the Bill, prisoners under 20 years of age would not be able to do so.
- 4.14 These are only a few examples of the many that could be provided. There are others of greater complexity. We note particularly the prospect of fraught interactions with the nominated sex provisions in the Births, Deaths and Marriages and Relationships Registration Act 2021, and in the Corrections Regulations 2005 (regs 65–65C).
- 4.15 When these provisions come to be considered by the courts, the context may be held to require a different construction of the relevant words to avoid the results described above. In the Law Society’s submission, that is not a reason to proceed with the Bill. Rather, it illustrates the uncertainty and confusion — and associated cost to litigants and the publicly funded Court system — that the Bill will create.
- 4.16 The Law Society considers that legislation ought to be clear, ought to have its intended effect, and ought to do so without unreasonably infringing on human rights or creating unnecessary ambiguity or uncertainty. The Bill will not achieve those goals, and the Law Society therefore submits that the Bill should not proceed past Select Committee.
- 4.17 If the Bill does proceed, the Law Society considers that a reasonable survey of the instances where the Bill will impact on existing legislation ought to be undertaken, with the ramifications considered and explicitly addressed.

Nāku noa, nā



David Campbell  
**President**