



Trans rights are human rights

A guide to your rights and protections as a transgender person

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TN: The logo at the top of the page is: Te Kāhui Tika
Tangata Human Rights Commission.

Introduction

Te Kāhui Tika Tangata | Human Rights Commission is mandated to protect and promote human rights for everyone, and affirms the rights of trans and non-binary people to be who they are.

In this publication, we outline how human rights law in Aotearoa New Zealand protects you. We also provide some information about what you can do if you feel your rights have been breached, including through our free, confidential dispute resolution service.

Trans rights are human rights

All people have the same human rights and freedoms and are born free and equal in dignity and rights. Transgender and non-binary people exist across the world and span all ages, ethnicities, societies, and cultures.

Tangata Whenua and other Indigenous peoples with a range of sexual orientations, gender identities and expressions, and sex characteristics have existed throughout history, including in the Pacific and Te Ao Māori. There are many culturally specific terms relating to sexual orientation and gender identities. These concepts are more about (or just as much about) familial, genealogical, social, and cultural individuality. For

example: Tangata ira tāne and Whakawahine (Māori); Fa'afafine (Samoa & American Samoa); Leiti/Fakaleiti (Tonga); Fakafifine (Niue); Akava'ine (Cook Islands); Pina (Tuvalu), Māhū (Taihiti and Hawaii); Vakasalewalewa (Fiji); and Palopa (Papua New Guinea).

Under international human rights standards, everyone has the right to be recognised, respected, and participate in public life. You have the right to define your own gender and be free from harm based on your gender. For further information on this statement please go here:

<https://tikatangata.org.nz/human-rights-in-aotearoa/rights-of-sexual-and-gender-minorities>

(<https://tinyurl.com/p5f9fwkd>) or here:

<https://yogyakartaprinciples.org/>

(<https://tinyurl.com/y656arvu>)

Human rights law in Aotearoa New Zealand

There are two main laws in New Zealand that specifically promote and protect human rights. They are the Human Rights Act and the New Zealand Bill of Rights Act. These laws exist alongside a framework of international human rights instruments, agreements, and guidance that help to inform and guide how our national human rights laws should be understood and applied.

Human rights in Aotearoa New Zealand are grounded on Te Tiriti o Waitangi and must reflect Te Ao Māori values. This means recognising the rights and mana motuhake of Māori as Tangata Whenua and Te Tiriti guarantee of tino rangatiratanga.

Your protections under the law

Unlawful Discrimination

The Human Rights Act protects people in Aotearoa New Zealand from unlawful **discrimination** in areas of public life including employment, education, access to public places and facilities, and accommodation.

Section 21 of the Human Rights Act lists the prohibited grounds of discrimination, **including sex and sexual orientation**. The government has considered that the ground of 'sex' includes people who are transgender (although they state that the law could be clearer). Interpreting our human rights law this way helps give effect to international human rights standards and guidance.

Unlawful discrimination is when you are treated unfairly compared to others because of a personal characteristic such as your gender identity.

Discrimination can be direct and obvious or subtle and hidden, but harmful just the same. It can include sexually

explicit or other inappropriate comments; questions; jokes; name-calling; images; online communications; transphobic, homophobic or other bullying; sexual advances; touching; and other unwelcome behaviour that insults, demeans, harms or threatens you in some way.

Discrimination can also be systemic, such as organisational rules or policies that look neutral but exclude trans people. Friends, family, or others who face discrimination because of their association with a trans person are also protected.

There are some exceptions in the Human Rights Act relating to employment, provision of services, and participation in things like sports. Exclusions are covered in Part 2 of the Human Rights Act (<https://tinyurl.com/3ks3h3y9>). The Human Rights Act also allows different treatment if it is done in good faith to help a person who belongs to a group against whom discrimination is unlawful, and if it is reasonable to think that group needs help to achieve equality. Read more on that at Section 73 of the Human Rights Act (<https://tinyurl.com/6ymydnk2>). More information about special measures to promote equality can be found on our website: (<https://tinyurl.com/ru6tf6tr>).

The Human Rights Act does not protect you from discrimination everywhere. For example, it does not cover the behaviour of your neighbours, people in public, or in

your private relationships. However, the Commission can still offer support in these situations, so we encourage you to contact us. We can provide information about your options or connect you with other organisations who can help.

Conversion Practices

In 2022 a new law was passed which made conversion practices illegal.

It is unlawful to perform a conversion practice with the intention of changing or suppressing someone's sexual orientation, gender identity, or gender expression. Read more at Section 63A of the Human Rights Act (<https://tinyurl.com/8uju32c2>).

Conversion practices are defined in the law as any practice, sustained effort, or treatment that is: directed towards an individual because of the individual's sexual orientation, gender identity, or gender expression; and is done with the intention of changing or suppressing the individual's sexual orientation, gender identity, or gender expression. Read more at Section 5(1) and 5(2) of the Conversion Practices Prohibition Legislation Act 2022 (<https://tinyurl.com/5cyywfhf>).

This means that a person can complain to the Human Rights Commission that they have had unlawful conversion practices performed on them.

A person can also contact police to lay a complaint. The police may then decide to lay criminal charges. Police have Diversity Liaison Officers, who you may wish to contact in the first instance. Go to this website for contact information: (<https://tinyurl.com/3vp6mx52>). Police can also make referrals to Victim Support.

It is important to note that contacting the Human Rights Commission to lay a complaint is separate to and does not involve the police or criminal justice system. The processes that the Human Rights Commission offers will not lead to criminal convictions or penalties against the perpetrator. You can choose to contact Police as well as coming to the Commission, or just take one of those paths.

How our complaints and mediation services work

If you think you have experienced discrimination because of your gender or experienced conversion practices, you can contact the Human Rights Commission for information, support, or to make a complaint.

The Human Rights Commission and the Office of Human Rights Proceedings offer free and confidential services for individuals, Tangata Whenua, schools, employees, employers, and the public sector. We can provide:

- **Dispute resolution** for complaints covered by the Human Rights Act
- **Wayfinding** to answer questions and provide information to help people understand their rights
- **Community peacebuilding** for people affected by harmful speech
- The Office of Human Rights Proceedings can provide **free legal representation** to people who want to take unlawful discrimination complaints to the Human Rights Review Tribunal. You can apply for legal representation after your complaint to the Commission has been closed.

Please contact us if you have questions or want more information.

Contact

Te Kāhui Tika Tangata | Human Rights Commission:

- Web address: <https://tikatangata.org.nz/resources-and-support/contact-us> (<http://tinyurl.com/wdk4yh8h>)
- Email: infoline@hrc.co.nz
- Call us toll-free between 8:30am and 5pm weekdays on 0800 496 877
- Text us between 8:30am and 5pm weekdays on 021 0236 4253

- If you are Deaf, hard of hearing, deafblind, speech impaired or find it hard to talk, you can use the New Zealand Relay Service. www.nzrelay.co.nz

OutLine Aotearoa:

- Web address: <https://outline.org.nz/chat>
- Email: info@outline.org.nz
- Call toll-free between 6pm and 9pm on 0800 OUTLINE (688 5463)
- If you are Deaf, hard of hearing, deafblind, speech impaired or find it hard to talk, you can use the New Zealand Relay Service. www.nzrelay.co.nz

Resource list

[PRISM: Human Rights issues relating to Sexual Orientation, Gender Identity and Expression, and Sex Characteristics \(SOGIESC\) in Aotearoa New Zealand – a report with recommendations](#) (June 2020, Human Rights Commission) (<https://tinyurl.com/mryk4y2s>)

[Yogyakarta Principles and Yogyakarta Principles plus 10: Principles and State Obligations on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Identity, Gender Expression and Sex Characteristics](#) (<https://tinyurl.com/y656arvu>)

[Solicitor-General's opinion clarifying the position of transgender people under the Human Rights Act](https://tinyurl.com/2229kxfk) (August 2006) (<https://tinyurl.com/2229kxfk>)

[Community Law Manual Online: Chapter on Sex, gender and sexual orientation](https://tinyurl.com/bdye92ur) (<https://tinyurl.com/bdye92ur>)

Disclaimer

This resource provides some general introductory information about trans rights. It is not legal advice and should not be relied on as legal advice. Human rights are a complex and evolving area of law, and some of the questions may be considered by the Human Rights Review Tribunal and courts in the future. Please contact us if you have questions or want more information.

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Glossary

Gender diverse – An umbrella term used by some who identify outside of the male/female gender binary. Being transgender can be one way of being gender diverse, but not all gender diverse people identify as transgender and vice versa.

Gender expression – refers to a person's presentation of gender through physical appearance – including dress, hairstyles, accessories, cosmetics – and mannerisms, speech, behavioural patterns, names and personal references. Gender expression may or may not conform to a person's gender identity.

Gender identity – refers to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.

Homophobic – irrational fear of, aversion to, or discrimination against homosexuality or lesbian, gay or bisexual people.

Intersex – A person whose sex characteristics are more diverse than typical definitions for male or female bodies, including sexual anatomy, reproductive organs, hormonal patterns, and/or chromosome patterns.

Mana Motuhake – is a Māori phrase that means self-determination, independence, sovereignty, and authority.

Non-binary – An umbrella term for gender identities which are neither male nor female. Pacific communities have

their own culturally specific terms relating to sexual orientation and gender identities. These concepts are more or just as much about familial, genealogical, social, and cultural individuality.

Sex characteristics – refer to each person's physical features relating to sex, including genitalia and other sexual and reproductive anatomy, chromosomes, hormones, and secondary physical features emerging from puberty.

Sexual orientation – refers to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender, or more than one gender.

Takatāpui – A traditional Māori term which means "intimate companion of the same sex." It has been reclaimed by some Māori to describe their diverse sexual orientation, gender identity or expression, and sex characteristics.

Tangata ira tāne – A Māori term which roughly translates as trans man.

Tangata Whenua – indigenous people (Māori) of Aotearoa

Te Ao Māori – a Māori phrase that means "the Māori world"

Te Tiriti o Waitangi – an agreement in the Māori language between tangata whenua and the British Crown signed in 1840. The English version is called the Treaty of Waitangi.

Tino rangatiratanga – Māori worldview term that can mean "self-determination," "sovereignty," "independence," or "autonomy".

Transgender – An umbrella term for a person whose gender differs from their sex assigned at birth.

Transgender people may be binary or non-binary, and some opt for some form of medical intervention (such as hormone therapy or surgery). Used as an adjective rather than a noun, and often shortened to 'trans.'

Transphobic – irrational fear of, aversion to, or discrimination against transgender and non-binary people.

Whakawahine – There is no direct English translation, but roughly translates as trans woman. More literally, it translates as being or becoming, in the manner or spirit of a woman.

End of Trans rights are human rights