Te Kāhui Tika Tangata
Human Rights Commission

Trans rights are human rights

A guide to your rights and protections as a transgender person

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 via 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.[1]

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[1] See https://tikatangata.org.nz/human-rights-in-aotearoa/rights-of-sexual-and-gender-minorities and https://yogyakartaprinciples.org/.

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 the 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.[2] 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.[3] More information about special measures to promote equality can be found on our website.[4]

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.[5]

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.[6,7]

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[2] Exclusions are covered in Part 2 of the Human Rights Act.

[3] Section 73 of the Human Rights Act.

[4] https://tikatangata.org.nz/resources-and-support/guidelines/guidelines-on-special-measures.

[5] Section 63A of the Human Rights Act.

[6] Section 5(1) of the Conversion Practices Prohibition Legislation Act 2022.

[7] Section 5(2) of the Conversion Practices Prohibition Legislation Act 2022.

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.[8] 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 offers 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.

[8] https://www.police.govt.nz/contact-us/local-contacts/diversity-liaison-officers.

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

Contact

www.tikatangata.org.nz

Email infoline@hrc.co.nz or call our Human Rights Information and Support line on 0800 496 877 and leave a message.

This pamphlet is available in accessible formats at www.tikatangata.org.nz/our-work/trans-rights-guide

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)

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

Solicitor-General's opinion clarifying the position of transgender people under the Human Rights Act (August 2006)

Community Law Manual Online: Chapter on Sex, gender and sexual orientation

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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